



Kenya Council of Employment and Migration Agencies v Nyamira County Government & 10 others (Civil Application E010 of 2020) [2024] KECA 313 (KLR) (22 March 2024) (Ruling)

Neutral citation: [2024] KECA 313 (KLR)

Republic of Kenya

In the Court of Appeal at Nakuru

Civil Application E010 of 2020

F Sichale, FA Ochieng & WK Korir, JJA

March 22, 2024

Between

Kenya Council of Employment and Migration Agencies

Applicant

and

Nyamira County Government

1st Respondent

Public Service Board Nyamira

2nd Respondent

H.E. John Obiero Nyagarama

3rd Respondent

Robert Mochache

4th Respondent

Peter Nyakundi

5th Respondent

Eric Aori Onchana

6th Respondent

Joash Nyamoko

7th Respondent

The Clerk of the County Assembly Nyamira County

8th Respondent

Naomi Ikonge Nyagarama

9th Respondent

The Hon. Attorney General

10th Respondent

Public Service Commission of Kenya

11th Respondent

(An application arising out of the judgment of the Employment and Labour Relations Court at Kericho (M. Mbaru, J.) delivered and dated 24th September, 2019 in ELRC Petition No. 1 of 2019)

Ruling

1. The pleadings lodged before this Court by the applicant, Kenya Council of Employment and Migration Agencies, were presumably drafted by Mr. Evans Nyambega Akuma who introduced himself as the Chairman of the applicant. This may explain the incomprehensive nature of those pleadings.

Nevertheless, in order to do justice to the parties we have, and regrettably so, tried without success to decipher what the applicant seeks from this Court.

2.The record shows that the applicant lodged an initial notice of motion dated 28th September 2020 in which it sought leave for the application to be heard under rules 4, 5(2)(b), 29 and 47 of the Court of Appeal Rules, 2010. The applicant also prayed that the leave so granted do operate as stay of the ruling dated 24th September 2019 in JR No. 1(B) of 2019. Another prayer was for leave to appeal out of time against the said ruling.

3.The notice of motion was amended a number of times. In the final motion dated 18th October 2023, which is said to be an amendment of the earlier motions, this time without any reference to the enabling legal provisions, the applicant seek orders as follows:“1.That the Application be certified as ready for hearing before three bench on 1st day of November 2023 as Directed by Hon. Registrar and service thereof be dispensed with in the first instance.2.That leave is hereby granted and confirmed that approval by DR-26 July 2023-Hon. Lina Akoth-directions given-be cause listed upon lapse of timelines is part of Court of Appeal judicial proceedings of all the respondents default of filing any defense in view of Main Notice of Motion Dated 28th Day Of September 2020.3.That Hon.deputy Registrar –administrative division no judiciary lacks powers or jurisdiction to set aside or review or stay high court judgments and rulings/or orders of Gazetted High Judges and Related Status Courts except Hon Court of Appeal mandated to son /by [the constitution](#) and other acts of parliament.4.That a mandatory injunction is hereby issued against the Hon. Solomon Ngetich Or Any Deputy Registrar At Kericho Law Courts to unconditionally process the certificate of costs and payments reimbursements of KSHS.5.That in this Appeal for quick disposal 1 st, 2nd 3 rd 4 th 5 th 6 th 7 th 8 Th 9 Th 10th Respondents And Interested Party do pay KSHS. 4, 534, 612. 23 /= to the Plaintiff/appellant each, jointly and severally whomsoever paying absolves the other at 12 % monthly rates from Delivered,dated and signed this 30th day of June, 2015.D.K. Njagi Marete Judge to its fullness payments.6.That leave is hereby granted and confirmed that approval by DR-26 July 2023-Hon. Lina Akoth-directions given-because listed upon lapse of timelines allowed amendments of Late H.e John Obiero Nyagarama-3rd Respondent Substituted Sued Naomi Ikonge Nyagarama-9th Respondent, Dr. Emily Kwamboka Nyagarama Matoke, Mr. Kefa Nyagarama-3Rd Respondent unconditionally in default of filing any defense.7.That This Hon. Court In This Applicant Application Dated 10th December 2021 is hereby certified as urgent owing to its urgency as set out herewith in Certificate Of Urgency was allowed unconditionally in default of filing any defense by extension of time, revival of this matter and its amendments of substitutions of Late H.e John Obiero Nyagarama-3rd Respondent Substituted Sued Naomi Ikonge Nyagarama-9th Respondent, Dr.emily Kwamboka Nyagarama Matoke, Mr.kefa Nyagarama - 3Rd Respondent unconditionally in default of filing any defense.8.That leave is hereby granted and confirmed that approval stay and consolidations of the of the following cases below and their subsequent orders and decrees, pending hearing and determinations of MAIN APPEAL as follows: Extends time, Revives this suit, Amends the following – pleadings on appeal filed on 28th Day Of September 2020 - Certificate of urgency, Supporting affidavit of certificate of urgency Notice of motion, Supporting affidavit of Notice Of Motion, Notice of Appeal from High Court, Annexure, Appeal from and interlocutory decision, Submission and other pleadings.”The application is supported by an affidavit from which the only understandable statement we can glean is that the deponent, Mr. Evans Nyambega Akuma, is the Chairman of the applicant and the applicant is a duly registered society under the [Societies Act](#).

4.At the virtual hearing of this application on 1st November 2023, Mr. Evans Nyambega spoke for the applicant while learned counsel Mr. Nyachiro appeared for the 1st and 3rd respondents. There was no appearance for the 2nd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th respondents. Both Mr. Nyambega and learned counsel Mr. Nyachiro opted to rely on their written submissions. We will not highlight the applicant’s submissions because they are obscure. Further, without comprehending what the application

is all about, we see no purpose in reproducing those by counsel for 1st and 3rd respondent.

5. In our opinion, this application is for striking out for want of jurisdiction. The jurisdiction of this Court is ordinarily invoked by the filing of a notice of appeal under rule 77 of the Court of Appeal Rules, 2022.

This is so regardless of whether leave is required to lodge an appeal or not. The only applications normally entertained by this Court without a properly filed notice of appeal are those brought under rule 4 for extension of time for filing a notice of appeal and such applications are always heard before a single judge. In this case, we have perused the application lodged by the applicant and we find no notice of appeal annexed to the application. Although there is an undated document titled “Amended Notice of Appeal” among the documents lodged in Court by the applicant after the filing of the amended notice of motion dated 18th October 2023, the absence of a notice of appeal is indeed conceded by the applicant considering that it had in the initial notice of motion sought leave to appeal out of time. That being the case, we are bereft of jurisdiction to determine this application on its merits. To this end, we only need to refer to the Supreme Court pronouncement in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014]eKLR that: “A Notice of Appeal is a primary document to be filed outright whether or not the subject matter under appeal is that which requires leave or not. It is a jurisdictional pre-requisite.”

6. Without jurisdiction, we have no power to attempt to make sense of the applicant’s poorly drafted pleadings. Even assuming that we had jurisdiction to entertain the applicant’s motion, we wonder whether we would have been able to hack through the applicant’s forest of pleadings in order to pick out even one single prayer deserving of any of the orders that are ordinarily granted by this Court. We have hereinabove intentionally reproduced the prayers in the applicant’s amended notice of motion in order to demonstrate that the orders the applicant seeks cannot be deciphered. Without saying more, we hereby strike out the applicant’s notice of motion dated 18th October 2023 because we lack jurisdiction to entertain it.

7. Having found that the applicant is not deserving of a hearing by this Court owing to the fact that no notice of appeal was filed, and not being certain that Mr. Evans Nyabega Akuma was in the first place authorized by the applicant to approach this Court, we order the parties (applicant on the one hand and the 1st and 3rd respondents on the other hand) who participated in the proceedings in respect to the struck out application to bear their own costs of the proceedings.

8. It is so ordered.

DATED AND DELIVERED AT NAKURU THIS 22ND DAY OF MARCH, 2024.
F. SICHALE JUDGE OF APPEAL
F. OCHIENG JUDGE OF APPEAL
W. KORIR JUDGE OF APPEAL
I certify that this is a true copy of the original.
Signed DEPUTY REGISTRAR



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