



**Sauti Communications Limited v Communications Authority of Kenya  
(Appeal 2 of 2021) [2021] KECMAT 185 (KLR) (29 October 2021) (Ruling)**

*Sauti Communications Limited v Communications Authority of Kenya [2021] eKLR*

Neutral citation: [2021] KECMAT 185 (KLR)

**REPUBLIC OF KENYA**

**IN THE COMMUNICATION AND MULTIMEDIA APPEALS TRIBUNAL**

**APPEAL 2 OF 2021**

**ROSEMARY KURIA, CHAIR, COLLINS WANDERI, VIVIENNE ATIENO,  
DAMARIS NYABUTI & RAMADHANI ABUBAKAR MUKIRA, MEMBERS**

**OCTOBER 29, 2021**

**BETWEEN**

**SAUTI COMMUNICATIONS LIMITED ..... APPELLANT**

**AND**

**COMMUNICATIONS AUTHORITY OF KENYA ..... RESPONDENT**

**Jurisdiction of the High Court to waive the lapse of time for filing an appeal at the Communication and Multimedia Appeals Tribunal**

*The respondent had raised a preliminary objection on the grounds that; the appeal had been filed out of time; and that the jurisdiction of the Tribunal could not be donated by the High Court. The court held that the High Court had supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function. The court noted that the High Court had declared that it was the wrong forum to determine the dispute and remitted the same for disposal to the Tribunal. In the same thread, the superior court waived the lapse of time for filing an appeal as contemplated in section 102F(2) of the Kenya Information and Communication Act.*

Reported by Kakai Toili

**Jurisdiction** – jurisdiction of the High Court – supervisory jurisdiction - Whether the High Court could waive the lapse of time for filing an appeal at the Communication and Multimedia Appeals Tribunal where the dispute had been struck out at the court – Constitution of Kenya, 2010, article 165(6) and (7); Kenya Information and Communication Act, Cap 411A, section 102F(2).

**Brief facts**

The appellant was aggrieved by the respondent’s decision to revoke their radio broadcasting frequency spectrum license 91.0 FM and thus filed the instant appeal. The appellant’s contention was that the revocation was illegal. The appellant claimed that they had been licensed since 2004 and that they had complied with all



the regulations of the license but they were not notified, accorded a hearing or given reasons for the revocation of the license by the respondent.

The appellant applied and was granted leave by the High Court to file a judicial review application. Subsequently, the High Court found that the application had been filed in the wrong forum and was not properly before it and struck it out. The High Court also directed the appellant to comply with the provisions of section 102(F) of the Kenya Information and Communication Act, and exhaust the remedy therein. The appellant was at liberty to lodge an appeal before the Tribunal within 60 days of the decision of the High Court. The respondent raised a preliminary objection on the grounds that; the appeal had been filed out of time; and that the jurisdiction of the Tribunal could not be donated by the High Court.

### **Issues**

Whether the High Court could waive the lapse of time for filing an appeal at the Communication and Multimedia Appeals Tribunal where the dispute had been struck out at the court.

### **Held**

1. Courts did not issue orders in vain. However displeased a person felt about a decision or an order of a court, they could not be allowed to disobey or dismiss the same willy-nilly. The order made by the High Court waiving the lapse of time for filing an appeal had not been discharged or appealed against. The Tribunal was not immune to orders of the superior court and was bound to comply. The respondent was ingeniously inviting the Tribunal to review the order of the High Court dated March 12, 2021. The Tribunal declined such an entreaty because that would be tantamount to sitting on appeal against the decision and order of the superior court; power the Tribunal did not and would not purport to arrogate.
2. Article 165(6) and (7) of the Constitution provided that the High Court had supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not a superior court, and in exercise of that power that High Court may call for the record of any proceedings before such any subordinate court or person or body or authority, and may make any order or give direction it considered appropriate to ensure the fair administration of justice. Section 18 of the Civil Procedure Act, Cap 21 provided that the High Court may at any stage, on application by a party before it, or on its own motion: transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same.
3. The High Court sitting at Machakos in its infinite wisdom declared that it was the wrong forum to determine the instant dispute and remitted the same for disposal to the Tribunal. In the same thread, the superior court waived the lapse of time for filing an appeal as contemplated in section 102F(2) of the Kenya Information and Communication Act. The appeal was filed within the timelines ordered by the superior court and was therefore properly before the court.

*Preliminary objection dismissed.*

### **Orders**

- i. *The appeal shall proceed for hearing before the Tribunal until its logical conclusion.*
- ii. *Costs shall be in the cause.*

### **Citations**

#### **Cases**

#### **Kenya**

1. *Basil Criticos v Attorney General & 8 others* Petition 258 of 2011; [2010] eKLR - (Explained)
2. *Macharia & another v Kenya Commercial Bank & 2 others* [2012] 3 KLR 199 - (Explained)
3. *Musimba, Patrick v National Land Commission & 4 others* Petition 613 of 2014; [2016] KEHC 5956 (KLR) - (Explained)

#### **Statutes**



## **Kenya**

1. Civil Procedure Act (cap 21) section 18- (Interpreted)
2. Constitution of Kenya, 2010 article 165(6)(7) - (Interpreted)
3. Kenya Communication (Appeals) Rules, 2019 (Act No 2 of 1998 Sub Leg) rule 4 - (Interpreted)
4. Kenya Information and Communications Act, 1998 (Act No 2 of 1998) section 102(F)- (Interpreted)

## **Advocates**

None mentioned

## **RULING**

1. The appellant filed this appeal because it is aggrieved by the respondent's decision of April 12, 2020 to revoke their radio broadcasting frequency spectrum license 91.0 FM. The appellant's contention is that the revocation was illegal, arbitrary, malicious, unreasonable, in bad faith; un-procedural, irrational and contrary to the rules of natural justice. The appellant claims that they have been licensed since 2004 and that they had complied with all the regulations of the license but they were not notified, accorded a hearing or given reasons for the revocation of the license by the respondent. They have also accused the respondent of preference for other parties.
2. On their part the respondents claim that the appellant were granted a radio broadcasting license for frequency 91.0 MHz FM but the same had been off air for over 12 months since November 8, 2006 contrary to clause 2.2 of the licensing regulations. The frequency was also off air from August 5, 2019 without the authorization of the respondent. The appellant admitted that Sauti Radio had been off-air but claimed that it was not deliberate but due to logistical issues related to their transmitter at Mua Hills. Inspection by the respondent on August 6, 2019 however indicated that the transmitter was okay but was tuned to 89.7 MHz FM belonging to another operator known as ATG. The appellant applied and was granted leave by the High Court at Nairobi to file Judicial Review HC Misc Application No 89 of 2020 Republic vs Communications Authority of Kenya, *ex-parte* Sauti Communications Limited on May 8, 2020.
3. On March 12, 2021 the High Court found that the application had been filed in the wrong forum and was not properly before it, struck it out and vacated the stay orders issued on May 8, 2020. The High Court also directed the appellant to comply with the provisions of section 102(F) of the Kenya Information and Communication Act, and exhaust the remedy therein. The appellant was at liberty to lodge an appeal before this Tribunal within 60 days of the decision of the High Court.
4. The appellant subsequently filed the instant appeal but the respondent has raised a preliminary objection on the grounds that:
  1. The appeal has been filed out of time and in violation of section 102(F) of the [Kenya Information and Communication Act](#) as read together with rule 4 of the [Kenya Communication \(Appeals\) Rules](#);
  2. This Tribunal can only assume jurisdiction over appeals properly commenced in accordance Act and the rules cited herein above and
  3. The jurisdiction of this Tribunal cannot be donated by the High Court.



## Analysis and Finding

5. The main issue for determination at this point is whether this Tribunal has jurisdiction to entertain and dispose of this appeal. The prosecution of the preliminary objection has been done by way of written submissions. The respondent avers that jurisdiction is everything and cited the case of *Samuel Kamau Macharia & another vs Kenya Commercial Bank & 2 others* SC Kenya Application No 2 of 2011 to emphasize that the question of jurisdiction is not a procedural one and that it goes to the very heart of the matter, and without jurisdiction, a court cannot entertain any proceedings. The respondent also cited Petition No 613 of 2014 (*Patrick Musimba v The National Land Commission & others*) where it was held that jurisdiction is donated to the courts by the Constitution or the statute which created them.
6. On their part the appellant avers that the High Court made an order directing them to comply with the provisions of section 102F of the *Kenya Information and Communication Act*, and exhaust the remedy therein, and gave them time to lodge an appeal before this Tribunal within 60 days of the High Court's judgement. According to the appellant, no appeal has been preferred against the decision of the High Court and this Tribunal is obligated to obey the order of the superior court. The appellant contends that belief of the person affected by an order of a competent court is irrelevant and the order must be obeyed. The appellant further contends that the Tribunal is the competent forum to hear this appeal, the same having been remitted to it for disposal by the High Court.
7. The High Court did not delve into the merits of the case, having arrived at the conclusion that it was the wrong forum. The appellant contends that disregarding the order of the High Court to extend time to lodge an appeal would be tantamount to leaving them without a remedy. This Tribunal is subordinate to the High Court and it is subject to the supervisory power of the High Court. The appellant further argues that the High Court has power to transfer suits to their appropriate forums by virtue of section 18 of the *Civil Procedure Act* and that the High Court can do so *suo motto*; that the preliminary objection is in contravention of the Practice Directions of 2007 which provide that suits ought to be transferred to the right forum without prejudice to the rights of the parties thereto as well as the doctrine of exhaustion of remedies. The appellant claims that the preliminary objection is untenable because it is not founded on a point of law; the lapse of time was waived by the High Court; and that no material has been placed before this Tribunal to show that there is an appeal pending against the order of the High Court.
8. Courts do not issue orders in vain. However displeased a person feels about a decision or an order of a court, they cannot be allowed to disobey or dismiss the same willy-nilly. In Hon *Basil Criticos vs AG & 8 others* [2012] eKLR Lenaola J (as he then was) stated that:

“It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”
9. The order made by the High Court waiving the lapse of time for filing an appeal has not been discharged or appealed against. This Tribunal is not immune to orders of the superior court and is bound to comply. The respondent has argued strenuously that the order is an intrusion into our jurisdiction by the superior court and that we should disregard it and act as if it does not exist. The respondent avers further that the High Court has no power to waive the lapse of time as it did. The respondent is ingeniously inviting this Tribunal to review the order of the High Court dated March



12, 2021. The Tribunal declines such an entreaty because that would be tantamount to sitting on appeal against the decision and order of the superior court; power this Tribunal does not and would not purport to arrogate.

10. Article 165(6) & (7) of the *Constitution 2010* provide that the High Court has supervisory jurisdiction the subordinate courts and over any person, body or authority exercising a judicial or quasi- judicial function but not a superior court, and in exercise of this power that High Court may call for the record of any proceedings before such any subordinate court or person or body or authority, and may make any order or give direction it considers appropriate to ensure the fair administration of justice (emphasis ours). Section 18 of the *Civil Procedure Act*, cap 21 provides that the High Court may at any stage, on application by a party before it, or on its own motion:

“-.....transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same.....”

11. The High Court of Kenya sitting at Machakos in its infinite wisdom declared that it was the wrong forum to determine the instant dispute and remitted the same for disposal to this Tribunal. In the same thread, the superior court waived the lapse of time for filing an appeal as contemplated in section 102F(2) of the *Kenya Information and Communication Act*. The appeal was filed within the timelines ordered by the superior court and is therefore properly before us.

12. The result of the foregoing is that the preliminary objection dated 17<sup>th</sup> August 2021 is hereby dismissed on the following terms:

1. This appeal shall proceed for hearing before this Tribunal until its logical conclusion.
2. Costs shall be in the cause.

It is so ordered.

**DELIVERED VIRTUALLY THIS 29<sup>TH</sup> DAY OF OCTOBER 2021 IN THE PRESENCE OF THE HONOURABLE MEMBERS OF THIS TRIBUNAL, COLLINS WANDERI, VIVIENNE ATIENO, DAMARIS NYABUTI AND RAMADHAN ABUBAKAR MUKIRA**

**ROSEMARY KURIA**

**CHAIRPERSON-COMMUNICATIONS & MULTIMEDIA APPEALS TRIBUNAL**

