



REPUBLIC OF KENYA



KENYA LAW
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**Climate and Energy Advisory Limited v Mwenda (Civil Application
E124 of 2025) [2025] KECA 1553 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1553 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E124 OF 2025
DK MUSINGA, JA
OCTOBER 3, 2025**

BETWEEN

CLIMATE AND ENERGY ADVISORY LIMITED APPLICANT

AND

ANGELINE NDUATA MWENDA RESPONDENT

(Being an application for extension of time to deem the notice of appeal and letter requesting for proceedings as properly filed and served against the judgment and decree of the Employment and Labour Relations Court of Kenya at Nairobi (Nduma Nderi, J.) delivered on 14th March 2024 in ELRC Cause No. 1614 of 2018)

RULING

1. By an application dated 28th February 2025 brought under rules 4, 77(2), 79(1) and 84(1) of this Court's Rules, the applicant prayed that the notice of appeal and the letter requesting for proceedings both dated 23rd January 2025 and filed on 24th January 2025 and 28th January 2025 respectively be deemed as properly filed and served.
2. In a supporting affidavit sworn by the Steven Mutimba, the applicant's managing director, he states inter alia, that the applicant, a consultancy specializing in clean energy and climate change, contracted the respondent as a short term principal consultant in terms of a contract dated 8th January 2018 which was terminated by a notice dated 30th April 2018; that the respondent sued the applicant alleging unfair and unlawful termination of employment and sought damages for breach of contract; that upon hearing the matter, the trial court (Nduma Nderi, J.), vide a judgment dated 14th March 2024 held that from 1st January 2018 the respondent was an independent contractor and not an employee of the applicant and therefore the termination of the contract was not subject to the provisions of sections 41, 43 and 45 of the Employment Act, 2007 and therefore he was not entitled to any compensation.



3. That notwithstanding, the court awarded damages for premature termination of a contract to the respondent as an independent contractor in the sum of Kshs.1,674,200 plus interest. The applicant contends that the Employment and Labour Relations Court (ELRC) lacked jurisdiction to determine a purely commercial contract dispute, which properly fell within the jurisdiction of the High Court.
4. Aggrieved by the said decision, the applicant instructed its then advocate Kamau, Lando & Associates LLP, to file an appeal. However, as at 18th April 2024 the applicant learnt that no notice of appeal had been lodged by the said advocates. Thereafter, the applicant instructed the firm of Prof. Mumma & Co. Advocates, who made an application for extension of time before the trial court on 18th April 2024, 28 days after the impugned ruling and 14 days after the timeframe contemplated under rule 77(2) of this Court's Rules. The application was heard and dismissed vide a ruling dated 23rd January 2025. The trial court held that although the delay was not inordinate, the applicant did not attach a draft memorandum of appeal to the application to enable the court gauge whether the intended appeal is arguable
5. Subsequently, the applicant filed a notice of appeal and requested for proceedings vide a letter dated 23rd January 2025.
6. The applicant believes that its intended appeal has triable issues of law, particularly the lack of jurisdiction, as there was no employer/employee relationship between the applicant and the respondent.
7. The respondent opposed the application vide an affidavit sworn on 19th May 2025. The respondent stated, inter alia, that the applicant has come to court with unclean hands, having filed the application on 28th February 2025 and directions issued on 7th March 2025 but delayed in service of the same until 16th May 2025; that the delay in filing the application and the appeal is inordinate since the impugned judgment was delivered on 14th March 2024 in the presence of the applicant's counsel; that a copy of the typed judgment was forwarded to the applicant's advocate vide a letter dated 28th March 2024; that there is no specific averment by the applicant's former advocates that they had been instructed to file an appeal; and that since the inordinate delay has not been substantively explained, the application should be dismissed. The respondent further contended that the intended appeal is a sham and is only calculated to delay recovery of the judgment sum.
8. I have considered the application for extension of time in the background of the principles set out by this Court in a plethora of its decisions as to the factors that guide this Court in an application of this nature. See *Leo Sila Mutiso vs Hellen Wangari Mwangi* [1999] 2EA 231. In determining whether to extend time, the court takes into account the length of the delay; the reason for the delay; the chances of the appeal succeeding if the application is granted; and the degree of prejudice that may be occasioned to the respondent if the application is granted.
9. In exercise of its discretion, the Court has to balance the interest of the successful party against those of the party who intends to exercise the constitutional right of appeal.
10. It is not in dispute that there was a delay of about 15 days in filing the notice of appeal, and equally, there is no dispute the applicant had initially instructed another firm of advocates to represent it in the matter. In my view, the delay was not inordinate, and the same has been properly explained. To deny the applicant the opportunity to pursue its constitutional right of appeal because of a mistake committed by its former advocate would be unjust.



11. I have looked at the draft memorandum of appeal and in my considered view, the intended appeal is arguable, particularly the issue of the trial court's jurisdiction to determine a dispute where there was no employer/employee relationship.
12. Consequently, I find the application meritorious and grant the orders sought. Each party shall bear its own costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

