



**Muhanji v Kenya Ports Authority (Civil Appeal (Application)
E064 of 2024) [2025] KECA 1567 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1567 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E064 OF 2024
F TUIYOTI, LA ACHODE & AO MUCHELULE, JJA
OCTOBER 3, 2025**

BETWEEN

ANTHONY MUHANJI APPLICANT

AND

KENYA PORTS AUTHORITY RESPONDENT

(Being an application to strike out the notice of appeal dated 26th June 2023, emanating from the Environment and Land Court at Mombasa (A.K. Nzei, J.) dated 19th June 2023 in ELRC No. 98B of 2021)

RULING

1. Before the Employment and Labour Relations Court (ELRC) at Mombasa, Anthony Muhanji, the applicant, sued the Kenya Ports Authority, the respondent, complaining that he had been summarily dismissed from employment via a letter dated 23rd June 2021 in a manner that was unfair, malicious, wrongful and illegal. The claim was opposed by the respondent. In the judgment that was delivered on 19th June 2023, the Court (Nzei, J.) allowed the applicant's memorandum of claim by declaring that the summary dismissal was wrongful and unfair. It was declared that the applicant's re-deployment from the position of Senior Works Officer Port Grade HM 2 to the position of Senior Architect Port Grade HM 2 was malicious, unlawful, and devoid of procedure. The respondent was ordered to reinstate the applicant to his former position of Senior Works Officer Port Grade HM 2 without any loss of benefits.
2. The respondent was aggrieved by the judgment. It filed Mombasa Civil Appeal (Appl.) No. E091 of 2023, and by notice of motion dated 26th September 2023 sought an order of stay of execution of the judgment and decree and stay of further proceedings. The application was opposed on the basis that, among other things, there was no valid notice of appeal filed by the respondent. In a ruling delivered



on 24th November 2023 by the Court (Murgor, Laibuta and Odunga, JJ.A.) the application for stay was allowed. Regarding the contentious notice of appeal, the Court observed –

“ 18. We have on record a Notice of Appeal lodged by the applicant before the Employment and Labour Relations Court, and that is all we want to say issue.”

3. The concern by the applicant was that the notice of appeal dated 26th June 2023 had not been served on him; that he had only become aware of it when it was annexed to the application dated 26th September 2023 for stay.
4. Before us is the applicant’s application dated 13th June 2024 pursuant to Rules 49, 59(2), 82, 83, 84, 85 and 86 of this Court’s Rules seeking to strike out the notice of appeal for not having been served on him, or that, in the alternative, the same be deemed to have been withdrawn. The reason for seeking that the notice of appeal be deemed to have been withdrawn is because, subsequent to its being filed, the record of appeal was filed well beyond the 60 days allowed by the law when no extension of time had been sought or granted.
5. In response to the application, and in the written and oral submissions by learned counsel Mr. Ondego for the respondent, it was conceded that, one, the notice of appeal had not been served on the applicant but had been annexed on the application for stay and therefore the applicant had become aware of it. Two, that the appeal had indeed been lodged one year after the said notice of appeal. Learned counsel asked us to extend to the respondent time and to deem the appeal as properly filed and proceed to determine the appeal on its merits.
6. According to learned counsel Ms. Wanja for the applicant, the earlier Court had not dealt with the question of the validity of the notice of appeal, and therefore it was open to this Court to deal with the issue. Learned counsel, however, conceded that the application to strike out the notice of appeal had been brought outside the 30 days required by the proviso to Rule 86 of the Rules. In the submissions of learned counsel Mr. Ondego, the issue of the validity of the notice of appeal had been determined by the previous bench.
7. We have considered the notice of motion, the response and the rival submissions.
8. Even if we had the jurisdiction to revisit the issue of the notice of appeal with a view to striking it out, we are constrained by Rule 86 of the Rules to dismiss the request. Rule 86 of the Rules provides as follows:-

“ A person affected by an appeal may, at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground—

- a. that no appeal lies; or
- b. that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:

Provided that an application to strike out a Notice of Appeal or an appeal shall not be brought after the expiry of thirty days after the date of service of the Notice of Appeal or Record of Appeal, as the case may be.”

9. Under the Rule, an application to strike out a notice of appeal has to be filed within 30 days of the service of the notice of appeal. It is common ground that the respondent did not serve the notice of



appeal dated 26th June 2023, but that the applicant became aware of it when served with the application for stay dated 26th September 2023. The present application to strike out the notice of appeal is being brought on 13th June 2024. In our view, the application to strike out the notice of appeal for not having been served on the applicant offends the proviso to Rule 86 of this Court’s Rules. Therefore, the competence of the notice of appeal cannot be questioned (see Attorney General -vs- James Hosea Gitau Mwara [2015]KELE 629 (KLR)).

10. There was the alternative prayer that the notice of appeal be deemed to have been withdrawn under Rule 85. The Rule provides as follows:-

- “(1) If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, that party shall be deemed to have withdrawn the notice of appeal and the Court may, on its own motion or on application by any other party, make such order.
- (2) The party in default under sub-rule (1) shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served.”

11. Rule 84(1) requires that an appeal be instituted by lodging a memorandum of appeal and record of appeal within 60 days of the notice of appeal. The proviso to the subrule (1) excludes such time as may be certified by the registrar as having been required for the preparation and delivery to the appellant of a copy of the proceedings where such an application for such proceedings is made within thirty days of the date of the decision intended to be appealed from. In addition, Rule 84(2) provides that an appellant shall not be entitled to rely on the proviso unless the application for a copy of the proceedings is in writing and a copy thereof is served on the respondent.

12. It is evident that, as deponed by the applicant, the respondent had not filed a memorandum and record of appeal by the time the present application was filed on 13th June 2024. Considering that the notice of appeal was filed on 26th June 2023, that was one year later. However, the respondent states that, relying on the proviso to Rule 84(1) and 84(2), the appeal was valid; that upon receiving the typed proceedings and certificate of delay, it filed the appeal on 8th August 2024. The certificate of delay by the Registrar was dated 29th July 2024. The certificate of delay was filed one month after this application. The respondent deponed that the applicant was aware that the proceedings before the trial court had been applied for.

13. We find that by the time of the filing of the application, there was no appeal that had been lodged by the respondent. The lodgment of the appeal was without extension of time. On the basis of Rule 85, we deem the notice of appeal as having been withdrawn and strike out the memorandum and record of appeal as being incompetent (see Mae Properties Ltd -vs- Joseph Kibe & Another [2017] eKLR; and Salama Beach Hotel Limited & 4 Others -vs- Kenyariri & Associates Advocates & 4 Others [2016] eKLR).

DATED AND DELIVERED AT MOMBASA THIS 3RD DAY OF OCTOBER 2025

F. TUIYOTT

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

