



**Mbitsi & another v Woods & another (Miscellaneous Application
E043 of 2025) [2025] KEELRC 2687 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2687 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E043 OF 2025**

M MBARŪ, J

OCTOBER 2, 2025

BETWEEN

SOLOMON NYAMBU MBITSI 1ST APPLICANT

ESTHER BAHATI KAZUNGU 2ND APPLICANT

AND

CAYLE WOODS 1ST RESPONDENT

PAUL WOODS T/A GAP KENYA MINISTRIES 2ND RESPONDENT

RULING

1. The applicant filed an application dated 24 April 2025 under the provisions of Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, sections 1A, 1B, and 3A of the *Civil Procedure Act*, seeking orders that leave be granted to file an appeal out of time following the judgment delivered on 20 March 2025 in Mombasa CMELRC No. E161 of 2024.
2. The applicants submitted their Supporting Affidavits and, having filed a claim against the respondents and following the judgment in Mombasa CMELRC No. E161 of 2024, are aggrieved and wish to appeal. The judgment was delivered on 20 March 2025 while they were upcountry attending a relative's funeral. Their claim was dismissed with costs due to failure to prove an employer-employee relationship. When the applicants returned to Mombasa on 24 April 2025 to discuss the way forward with their advocate, they gave instructions to file an appeal, which was already out of time.
3. The two-day delay in not filing the appeal is not unreasonable. It is justifiable given the prevailing circumstances of the applicants.
4. The appeal has a substantial likelihood of success and should be permitted to proceed once leave is granted to file the appeal out of time.



5. In response, the respondents submitted Grounds of opposition stating that the application was not filed in good faith and lacks sufficient cause. There is no evidence provided to justify the delay in not filing an appeal in time. The applicants have failed to adhere to procedural requirements for lodging an appeal, and their application should be dismissed with costs.
6. Both parties submitted written submissions, which are analysed and addressed in the findings.
7. The judgment of the trial court was delivered on 20 March 2025. Under Rule 12(2) of the Employment and Labour Relations Court (Procedure) Rules, an appeal must be lodged within 30 days from that date.
 - (2) Where an appeal is from a magistrate's court or where no period of appeal is specified in the written law referred to in sub-rule 0), the appeal shall be filed within thirty days from the date the The decision is delivered.
8. Following the applicable Rule, an appeal should have been filed on or before 2 May 2025, considering the time calculation under Order 51. The current application was filed on 25 April 2025, when the applicant's 30-day period under Rule 12 had not yet expired.
9. The instant application was unnecessary. By 24 April 2025, the applicants should have filed their appeal.
10. The court takes it that mathematical calculations are subject to errors. To avoid falling foul of the law, to secure their right of appeal, the applicants took the option to file the instant application.
11. Even with the error in tabulating time, the two-day delay is not inordinate.
12. Having addressed these facts, the applicants have now lost crucial time. The court allows 14 days leave to file and serve the appeal. On costs, it is only fair that the applicants pay the respondents who have attended and filed a response their costs, assessed at KSh. 5,000.
13. Accordingly, the application dated 24 April 2025 is allowed, and the applicants have 14 days to file and serve their appeal. For the application, the applicants are to pay the respondents KSh. 5,000 all-inclusive.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 2ND DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

