



Suhara Transport (K) Limited (Previously trading as Primefules Kenya Limited) v Mwalimu (Miscellaneous Application E078 of 2025) [2025] KEELRC 2810 (KLR) (16 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2810 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E078 OF 2025**

**M MBARŪ, J
OCTOBER 16, 2025**

BETWEEN

SUHARA TRANSPORT (K) LIMITED (PREVIOUSLY TRADING AS PRIMEFULES KENYA LIMITED) APPLICANT

AND

MUSANGO MWALIMU RESPONDENT

RULING

1. The applicant submitted an application dated 12 August 2025 under the provisions of order 42 rule 6, order 51 rule 1 of the Civil Procedure Rules and Rules 18, 21, 45 and 80 of the Employment and Labour Relations Court (Procedure) Rules (the Court Rules), seeking Orders:

The court be pleased to extend the time within which the applicant is to file an appeal against the judgment and decree of the Hon. R. N. Akee delivered on 4 June 2025 in Mombasa CMELRC No. E257 of 2021, which was amended by consent through an order dated 7 August 2025.

Pending hearing and determination of the intended appeal, this court be pleased to stay the execution of the judgment and decree of the Hon. R. N. Akee delivered on 4 June 2025 in Mombasa CMELRC No. E257 of 2021, which was amended by consent through an order dated 7 August 2025.

Costs to abide by the outcome of the intended appeal.

2. The application is supported by the Affidavit of Gift Buso Katama, the human resources and administration manager, who avers that the trial court judgment was delivered on 4 June 2025 in favour of the respondent, who was awarded;



- a. Ksh. 17,830 notice pay.
 - b. Ksh. 49,925 unpaid leave.
 - c. Ksh. 52,302 public holidays.
 - d. Ksh. 213,956 compensation for unfair termination.
 - e. Costs and interests.
3. The appellant has since changed names from Primefuels Kenya Limited to Zuhara Transport (K) Limited, and, through a consent Order dated 7 August 2025, the parties agreed to reflect this change in the judgment. There was a delay in filing the appeal on time because the appellant was eager to address the name change before submitting its appeal.
 4. The intended appeal is well-founded, and the appellant seeks to challenge the findings of the trial court. There was a Discharge Voucher that was not taken into account in the trial court's assessment of the final awards to the respondent. Where this is considered, the appeal will be allowed.
 5. Katama avers that the court is seized of jurisdiction to grant the orders sought under sections 79G and 3A of the *Civil Procedure Act*, read with Order 42, Rule 6 of the Civil Procedure Rules. The extension of time to file an appeal arose from administrative issues, which were immediately addressed. A consent order was recorded on 7 August 2025. This application was filed. The intended appeal is arguable, and the appellant should be allowed to urge its appeal.
 6. In reply, the respondent filed Grounds of Opposition, arguing that the instant application is an abuse of court process and untenable. In light of the court's practice and procedure rules, the orders sought for a stay of execution are invalid in the absence of any appeal that has yet to be filed. The applicant is thus fatally defective, a waste of court time, and should be dismissed with costs.
- Both parties attended court and made oral submissions.
7. The twin issues for determination are whether the court should allow more time for the appellant to file its appeal out of time and whether an order of stay of execution of the judgment delivered on 4 June 2025, in Mombasa CMELRC No. E257 of 2021 should be issued.
 8. It is common cause that the trial court delivered judgment on 4 June 2025 in favour of the respondent.
 9. The appellant has not filed an appeal because it first sought to effect the change of name from Primefuels Kenya Limited to Suhura Transport (K) Limited, which was allowed by consent order on 7 August 2025.
 10. Under Rule 12 of the Court Rules, an appellant should file an appeal within 30 days from the date the subject order(s) of appeal were delivered.
 11. From 4 June 2025, the time to appeal lapsed on 17 July 2025 in terms of Order 50 rule 1 of the Civil Procedure Rules read together with Rule 80 of the Court Rules. More fundamentally, an applicant must invoke section 79G of the *Civil Procedure Act* when seeking more time to file an appeal out of time.

79G. Time for filing appeals from subordinate courts

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period



any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

12. The applicant has not applied under Section 79G of the *Civil Procedure Act*, but mentions it under the grounds of the application. This is a misnomer.
13. However, the delay in not filing the appeal is noted, and the reasons outlined are reasonable and genuine. Moving the court under a title or name that has been changed would result in the dismissal of the appeal. The applicant needed to move the trial court with the required changes before filing its appeal under the correct title.
14. The applicant shall enjoy 14 days extension within which to file the appeal.
15. On the second issue of stay of execution, under a miscellaneous application, once the second issue became an extension of time to file an appeal out of time, it became the sole basis for the application. There is no appeal yet. The basis for a stay of execution arises only at the trial court, not at this stage, where there is no appeal. The respondent is correct in submitting that such a prayer/order in the instant application is fatally defective and has no foundation. What would result from being granted such an order under a miscellaneous application? Where the applicant opts not to file an appeal within the allocated timelines, the order of stay would have no standing.
16. In this regard, the application dated 12 August 2025 is allowed, and the applicant is granted 14 days to file and serve its appeal out of time. The order automatically lapses on 6 November 2025 if not applied. The applicant shall meet the respondent's costs.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 16TH DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

