



Kutus Stage Savings and Credit Cooperative Society Limited v Nyamau (Civil Appeal E002 of 2025) [2025] KEELRC 3340 (KLR) (27 November 2025) (Ruling)

Neutral citation: [2025] KEELRC 3340 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CIVIL APPEAL E002 OF 2025**

L NDOLO, J

NOVEMBER 27, 2025

BETWEEN

**KUTUS STAGE SAVINGS AND CREDIT COOPERATIVE SOCIETY
LIMITED APPELLANT**

AND

FRANCIS MUNENE NYAMAU RESPONDENT

RULING

1. This ruling determines the Appellant’s plea for inclusion of the judgment in Kerugoya MCCC No E159 of 2023 in the Record of Appeal. The plea is contained in the Notice of Motion dated 28th July 2025, by which the Appellant sought leave to file the Record of Appeal out of time.
2. While the Respondent does not object to extension of time for filing the Record of Appeal, he is opposed to inclusion of the judgment in Kerugoya MCCC E159 of 2023 in the Record of Appeal.
3. The Respondent opposes the Appellant’s plea by his replying affidavit sworn on 2nd October 2025. He depones that inclusion of the judgment in Kerugoya MCCC E159 of 2023 in the Record of Appeal, is irregular, un-procedural and contrary to the law for the following reasons:
 - a. The proceedings in Kerugoya MCELRC No E006 of 2023, being the subject of this appeal, were concluded on 17th January 2025, when judgment was delivered;
 - b. The judgment in Kerugoya MCCC No E159 of 2023 was delivered subsequently on 20th June 2025, long after conclusion of the proceedings appealed against;
 - c. The said judgment was not part of the documentary or evidentiary record before the trial court in Kerugoya MCELRC No E006 of 2023;



- d. Rule 15(1) of the Employment and Labour Relations Court (Procedure) Rules expressly prohibits the introduction in a Record of Appeal, any pleadings, documents or evidence not forming part of the trial court record;
 - e. The Appellant's attempt to sneak into the Record of Appeal, the judgment in Kerugoya MCCC No E159 of 2023, amounts to introduction of extraneous material that was never subjected to trial, cross examination or judicial consideration, in the proceedings in Kerugoya MCELRC No E006 of 2023;
 - f. The effect is to mislead this Court and to distort the true scope of the Record of Appeal, thereby prejudicing the fairness and integrity of the appellate process;
 - g. The inclusion of the said judgment renders the Appellant's Record of Appeal defective to the extent of that inclusion.
4. In a supplementary affidavit sworn by the Appellant's Treasurer, Allan Mwangi Mumbura on 14th October 2025, it is deponed that in the lower court proceedings in MCELRC No E006 of 2023, the Appellant, in its Reply to the Statement of Claim, stated that the Respondent had converted money belonging to the Appellant, which conversion led to his absconding duty.
 5. Mumbura further depones that during the hearing before the lower court, the issue of misappropriation by the Respondent was raised but the trial court, in its judgment failed to take into account the existence and relevance of Civil Case No E159 of 2023.
 6. Rule 15(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides as follows:
 1. A memorandum of appeal shall be accompanied by a record of appeal comprising of a certified copy of pleadings, the proceedings, any documentary evidence relied on, and the judgment, ruling, decision, order, decree or award appealed against.
 7. It must be emphasised that what is before me is a first appeal and the duty of a first appellate court is to conduct a retrial based on the record from the lower court.
 8. In this regard, the following holding in Kenya Ports Authority v Kuston (Kenya) Limited [2009] 2 EA 212 is instructive:

“On a first appeal...the Court...should consider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence. [Emphasis Added]
 9. The Appellant's attempt in this appeal is to introduce a judgment, that was delivered long after conclusion of the proceedings forming the subject of the appeal. Whatever the outcome of the proceedings in Kerugoya MCCC No E159 of 2023, it was clearly not available at the time the judgment in Kerugoya MCELRC No E006 of 2023 was delivered.
 10. That being the case, the latter judgment could not have been part of the record at the lower court and cannot logically form part of the Record of Appeal. For this reason, I find and determine that the Appellant's attempt to include the said judgment in the Record of Appeal was ill advised.



11. In the result, the judgment in Kerugoya MCCC No E159 of 2023 is expunged from the Record of Appeal.
12. The Appellant will pay the costs of the application.
13. Orders accordingly.

DELIVERED VIRTUALLY THIS 27TH DAY NOVEMBER 2025

LINNET NDOLO

JUDGE

Appearance :

Mr. Kii h/b for Mr. Kimemia for the Appellant

Mr. Malonza for the Respondent

