

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E243 OF 2024

(Before D.K.N. Marete)

ZADDPCL AMANYA LUSEKA.....CLAIMANT

VERSUS

CATHERINE NJOGU NDWIGA.....1ST RESPONDENT

LUCY WANDEGA NDWIGA2ND RESPONDENT

ANTHONY MUGENDI NDWIGA.....3RD RESPONDENT

MAURINE KARIMI NDWIGA.....4TH RESPONDENT

THE ESTATE OF THE LATE JAMES NDWIGA.....5TH RESPONDENT

RULING

This is an application dated 14th August, 2024 seeking orders for extension of time for filing an appeal against the decision of the trial court in CMEL E602 of 2022 delivered on 8th December, 2023.

The Application raises the following as grounds in support of their application.

- The appeal raises an arguable appeal with issues requiring the examination of this court.
- Judgment was not delivered on the set dates of 14th July, 2023 but was re-scheduled to 7th December, 2023 and ultimately delivered on 8th December, 2023.
- The claimant's advocate did not have the control of cell phone number 0702 707 789 belonging to a deceased's advocate and law firm partner and was not party to any communication, if at all, sent on this phone.
- It is in the interest of justice that this application is granted.

The Respondent opposes the application vide their Replying Affidavit sworn on 11th December, 2024. It is their case that court matters are always listed on the cause list and the next date issued

notifying the scheduled date in the event of the judgment to be delivered is not ready. In the event that dates are not issued in open court, judgment is usually given by notice through email or daily cause list which is usually seven (7) to fourteen (14) days prior to the set-out judgment date.

It is the Respondent's further case and averment that all this time, the applicant was aware or ought to have been aware of the judgment date through prior date in open court, email or the day's cause list. In any event, any communication from court is made via email and telephone while cause list are accessed through the court tracking system and thus the deceased advocate's phone number is a mere excuse as this was not the only way of obtaining the judgment date.

Lastly, the Respondent avers that the filing of the appeal out of time is a mere afterthought intended to distract a well-reasoned judgment though undefended. A denial of grant of this application is not likely to prejudice the applicant as they are likely to receive just results in this litigation.

The Respondent's case overwhelms that of the Applicant. It resoundingly demonstrates a clear case where the Applicant has access to information relating to court proceedings and eventual judgment of court.

If this was not the case, the Applicant ought to have exercised normal prosecutorial prowess in referring to the procedural aspects of the litigation before them. I agree with the Respondent that they have not offered good reasons for their default in obtaining the judgment date and judgment of court. This is wholly dalliance on their part and they have no one to blame.

I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

Delivered, dated and signed this 19th day of November 2025.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Wetaba instructed Wetaba, Were & Associate Advocates for the Intended Appellant/Applicant.
2. Miss Mukaya instructed by Beam Law Advocates for the Respondent.