

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MALINDI**

**APPEAL NO. E009 OF 2025**

**BOFU FEFA CHILDREN DEVELOPMENT CENTRE .....  
APPELLANT**

**VERSUS**

**AGNES MWAKA MUNGA ..... RESPONDENT**

**RULING**

The appellant filed an application dated 9 September 2025 under Rules 21 and 74 of the Employment and Labour Relations Court (Procedure) Rules seeking orders that the orders issued on 22 July 2025 dismissing the appeal for want of prosecution be set aside, and that the appeal be reinstated and heard on merit. The appellant is also seeking orders that there be a stay of execution of the judgment in ELRC No. E002 of 2022.

The affidavit of Jimmy Kiseu supports the application and advocates for the appellant, who avers that the appeal was filed on 26 April 2025 by the firm of Omurwa Advocates. The matter came up for hearing on 8 July 2025. There was no attendance, and a notice to show cause for the dismissal of the appeal was issued.

Kiseu avers that on 15 and 22 July 2025, the matter was in court and dismissed for non-attendance. Mr Kiseu was on leave and could not secure the attendance of the advocates. The advocates were under a mistaken belief that the appeal was pending.

The appellant has secured new advocates to prosecute the appeal and desires to be heard on the merits. The appellant will suffer irreparable loss and damage if the appeal is not reinstated.

In reply, the respondent filed her Replying Affidavit and avers that the judgment of the trial court was delivered on 8 April 2025 on the ground of unfair termination of employment. It has been so for 5 years, and the appellant has not moved the court to hear the appeal. The loss

to be suffered if the orders sought are not issued is not demonstrated, and the application should be dismissed with costs.

#### Determination

The single issue for determination is whether the court should reinstate the appeal dismissed on 22 July 2025.

The appeal was filed on 26 April 2025 against the judgment of the trial court in Mariakani MCELRC No. E002 of 2022 delivered on 8 April 2025.

As admitted by the appellant, the matter was mentioned on 8 July 2025 when the parties were absent.

A notice to show cause why the appeal should not be dismissed was issued for 22 July 2025.

On the due date, both parties remained absent. The appeal was dismissed for non-attendance and lack of prosecution.

In the instant application, the appellant asserts that there was no attendance in court because Mr Kiseu was on leave. The nature of leave, dates and purpose are not addressed.

There are two specific dates with no attendance: 8 April and 22 July 2025. The alleged leave is not located for both days. Where counsel for the appellant was granted leave, the appellant, as a corporate entity and the rights holder, should have attended to secure its rights.

Failure to attend court without reasonable cause is tantamount to impeding justice as held in **Odhiambo v Mwangi [2025] KEELC 5382 (KLR)**. Upon filing the appeal, the appellant should have had the urge to prosecute its case to a conclusion. Leaving it to the court to issue notices was to open the matter to dismissal for want of prosecution.

That addressed, and the reasons for non-attendance considered, the more serious concern in this appeal is that since filing the appeal on 26 April 2025, the appellant has not filed the Record of Appeal. Under Rule 15(2) of the Employment and Labour Relations Court (Procedure) Rules, upon filing the Memorandum of Appeal, the Record of Appeal should have been filed within 60 days from the date the trial court delivered judgment:

***(2) Where the record of appeal is not filed together with the memorandum of appeal, the appellant shall file the Record within sixty days from the date of delivery of the judgment, ruling, decision, order, decree, or award appealed against.***

The appellant does not address this lapse at all.

The Rules of the Court are very generous and allow a party to file a Supplementary Record of Appeal under Rule 16. However, an appellant must demonstrate that efforts have been made to file a Record of Appeal, and, where documents are missing from the trial court, a supplementary record can be filed for reasonable cause.

The appellant has not taken any steps in this regard.

The appeal has since abated. 60 days from 8 April 2025 lapsed in July 2025. A reinstatement of the appeal as sought by the appellant will not achieve any useful purpose, taking into account the provisions of Rule 15 of the Employment and Labour Relations Court (Procedure) Rules. The court finds no reasonable cause to reinstate the appeal.

**Accordingly, the application dated 9 September 2025 is without merit and is hereby dismissed with costs to the respondent. The appeal stands dismissed.**

Delivered in open court at Mombasa, this 16th day of December 2025

M. MBARŪ  
JUDGE

In the presence of:

Court Assistant:

..... and .....