



Abuchere v Mburu t/a Wilmer Petrol Station & another (Miscellaneous Application E003 of 2025) [2025] KEELRC 3727 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3727 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION E003 OF 2025**

**J RIKA, J
DECEMBER 19, 2025**

BETWEEN

FRANCIS ABUCHERE APPLICANT

AND

**WILSON GATHOGO MBURU T/A WILMER PETROL
STATION 1ST RESPONDENT**

MARY NJERI KIMARI T/A WILMER PETROL STATION ... 2ND RESPONDENT

RULING

1. The Applicant wishes to appeal against the Judgment of the Hon. Senior Resident Magistrate, Nyahururu, delivered on 12th August 2024, in Nyahururu C.M.E.L.R.C No. E002 of 2023.
2. He was not able to file his appeal within 30 days, prescribed under Rule 13 of the E&LRC [Procedure] Rules, 2024.
3. He filed an application dated 10th December 2024, seeking extension of time.
4. The application was filed at the High Court in Nyahururu, and later transferred to this Court at Nakuru.
5. He states, through his supporting affidavit sworn on 10th December 2024, that he sought a copy of the Judgment from the Judiciary CTS, but was advised that it was not available.
6. He obtained a copy 2 months after the Judgment was delivered, well past the 30 days allowed in filing of appeals from the Magistracy.
7. He states that he has an arguable appeal as shown in his draft Memorandum of Appeal. He made his application within reasonable time, upon accessing the Judgment of the Trial Court.
8. The 1st Respondent filed an affidavit opposing the application, sworn on 19th September 2025.



9. He states that Judgment was delivered on 12th August 2024, in the presence of both Counsel for the Parties.
10. 30 days ended around 12th September 2024. There was prolonged delay in filing the application. The applicant has not established that he followed up supply of a copy of Judgment. There are no letters requesting for a copy of the Judgment, and no receipts issued by the Court, showing that such a request was made.
11. A Party is allowed to file an appeal without a copy of the Judgment against which the appeal is made. Appeal can be filed without typed proceedings. Delay in obtaining Judgment cannot be a reason to justify delay, in filing an appeal.
12. The Respondent urges the Court to decline the application.
13. Parties agreed to have the application considered and determined on the basis of their affidavits and submissions. They confirmed filing of submissions at the last appearance before the Court on 24th October 2025.

The Court Finds: -

14. Appeals before this Court, are regulated under Part III of the E&LRC [Procedure] Rules, 2024.
15. Extension of time to file an appeal, is regulated by Rule 18 of the said Rules, not by Rules from the *Civil Procedure Act*, cited by the Applicant.
16. The Rule stipulates that the Court may, if circumstances justify, extend time prescribed for filing of an appeal or any document relating to an appeal.
17. Judgment was delivered by the Trial Court on 12th August 2024. Rule 12[2] of the E&LRC [Procedure] Rules, 2024, states that an appeal from the Magistrate's Court, shall be filed within 30 days from the date the decision is delivered.
18. Are there circumstances to justify extension of time, under Rule 18 of the E&LRC [Procedure] Rules 2024?
19. The Judgment was delivered in the presence and full hearing of the Counsel for both Parties.
20. The Applicant's main explanation for delay in filing his appeal, is that he was not able to access a copy of the Judgment from the CTS for 2 months.
21. He does not say if he applied for a copy of the Judgment, and typed proceedings of the Court, after, or any time soon, after the Judgment was delivered on 12th August 2024. In his supporting affidavit, he exhibits only a draft Memorandum of Appeal.
22. The Court has not been provided with letters seeking copy of the Judgment, letter seeking typed proceedings, a copy of the Judgment or typed proceedings. All the Applicant has exhibited is a draft Memorandum of Appeal.
22. Rule 11 [1] of the E&LRC [Procedure] Rules, 2024, states that before filing a Memorandum of Appeal, the appellant shall request in writing from the Court, person or body whose decision is under appeal, copies of the proceedings, any documentary evidence relied on and copy of the judgment, ruling, decision, order, decree or award appealed against.



22. The Applicant has not established that there are circumstances, which would justify extension of time to file an appeal. His Advocate was in Court when the Judgment was delivered. The Applicant took no active measures under the Rules, to signal his intention to appeal.

It Is Ordered: -

- a. The application is declined.
- b. No order on the costs.
- c. The file is closed.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, UNDER RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 19TH DAY OF DECEMBER 2025.

JAMES RIKA

JUDGE

