

**REPUBLIC OF KENYA**

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

**APEPAL NO. E136 OF 2025**

**SAMMY GEORGE SIMIYU ..... APPELLANT**

**VERSUS**

**CONSOLBASE LIMITED ..... RESPONDENT**

**RULING**

The appellant filed an application dated 24 October 2025 under the provisions of Rules 11, 15(1), 16 and 18 of the Employment and Labour Relations Court (Procedure) Rules and article 159 of the Constitution seeking orders:

1. Spent.
2. The court be pleased to set aside the orders issued on 21 October 2025 dismissing the appeal for want of competence with Rule 15(2) of the Employment and Labour Relations Court (Procedure) Rules.
3. Upon issuing prayer (2) above, the court be pleased to grant the appellant leave and extend the time within which to file and serve the Supplementary Record of Appeal.
4. The court be pleased to grant any other reliefs it deems fit and just in the circumstances.
5. Costs of the application be provided for.

The application is supported through the Affidavit of Joseph Otwere, advocate for the appellant, who avers that on 14 October 2025, the court issued a notice to show cause why the appeal should not be dismissed for noncompliance with Rule 15(2) of the Employment and Labour Relations Court (Procedure) Rules (the Court Rules). The failure to file the Supplementary Record of Appeal was due to the fact that the court file could not be traced. Attempts to obtain certified copies of the proceedings and judgment were unsuccessful because the court registrar stated that the file could not be traced.

Otherwise, the appellant avers that the application filed an Affidavit on the reasons why the Record of Appeal could not be filed in full. When the matter came up in court for the show cause, the appellant's advocate was unable to log in to the online court.

There is an arguable appeal, and unless the orders sought are granted, the appellant will suffer prejudice and hence should be allowed to prosecute the appeal.

In reply, the respondent filed the Affidavit of Akanga Alera, an advocate, who avers that the court summoned the parties on 23 September 2025, following the Deputy Registrar's directions of 20 August 2025. Parties confirmed the appeal had been filed.

On 2 October 2025, directions on the appeal were issued. However, the appellant submitted that the court proceedings necessary for the Record of Appeal had not been filed. The court allowed 14 October 2025 for directions and to confirm the Record of Appeal. A Supplementary Record of Appeal was to be filed. There was no compliance.

The court issued a notice to show cause why the appeal should not be dismissed for failure to comply with Rule 15(2) of the Court Rules, and set the matter for 22 October 2025. On the due date, the appellant did not attend and had not filed the Supplementary Record of Appeal. The appeal was thus dismissed with costs. It later transpired that the appellant had filed an Affidavit attempting to show cause why the appeal should not be dismissed. There was no proper service before the due date on 22 October 2025.

Akanga avers that there is no reasonable explanation for the failure to file the Supplementary Record of Appeal.

On the application, parties filed written submissions. The issues for determination are whether the court should set aside the orders issued on 21 October 2025 dismissing the appeal for want of compliance with Rule 15(2) of the Court Rules; whether time should be extended to file the Supplementary Record of Appeal; and who should pay costs.

There was no sitting on 21 October 2025. The date the court dismissed the appeal was 22 October 2025.

The court appreciated that the subject judgment of appeal was delivered on 27 June 2025, and, under Rule 15 of the Court Rules, the time to file and serve the Record of Appeal was 60 days, which had since lapsed without the full Record of Appeal.

The substantive orders sought thus relate to a different date of 21 October 2025 and not the correct date of 22 October 2025. However, in the interests of justice, the application seeks that the orders dismissing the appeal be set aside and that time be extended to file the Supplementary Record of Appeal.

Indeed, under Rule 15(2) of the Court Rules, an appeal should be filed within 30 days from the date of the impugned judgment or ruling in terms of section 17 of the Employment and Labour Relations Court Act, read together with Rule 12 of the Court Rules.

In the event the appellant is unable to secure the Record of Appeal, Rule 15 of the Court Rules allows a party 60 days from the date the judgment or ruling was delivered to file the Record. This rule is thus generous and recognises that it may take time to obtain typed proceedings and the full record from the trial court.

However, if the appellant or a respondent who has a cross-appellant is unable to secure the Record of Appeal within the allocated 30 days or 60 days under Rules 12 and 15 of the Court Rules, recourse is made under Rule 18 of the Court Rules:

***18. The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.***

An appellant is allowed to move the court and seek a time extension. A good basis must be established why such an extension is necessary in view of the fact that there is sufficient and ample time allocated under the rules within which to file an appeal and the Record of Appeal within 60 days.

In this case, the parties appeared before the court on 23 September 2025 for a directions hearing. The court directed that the appeal was filed on 10 July 2025 and should have been accompanied by a Record of Appeal within 60 days. The time was extended to 2 October 2025, with directions that, where there was no Record of Appeal, the appeal would be dismissed.

On the due date of 2 October 2025, a partial Record of Appeal was filed. The appellant requested 7 days to file the Supplementary Record of Appeal, which was granted, except where the same was not filed. The court invited the parties to show cause why the appeal should not be dismissed for want of compliance with Rule 15(2) of the Court Rules. Mention was made for 14 October 2025.

On the due date, no Supplementary Record was filed. The notice to show cause was not satisfied. The notice to show cause was extended to 22 October 2025. On the due date, there was no Supplementary Record of Appeal, and the appellant did not attend court. The appeal was dismissed, having been made for lack of compliance with Rule 15 of the Court Rules.

On the instant application, save to urge the court that the orders dismissing the appeal be set aside and time be extended to file the Supplementary Record of Appeal, on the basis that the trial court file had been missing, there is no compliance with the Appeal requirements, and no Record of Appeal is filed in full. The purpose of the setting aside of the order dismissing the appeal is lost. The need to extend time to file the Supplementary Record of Appeal, whether in draft or in any format, is missing. Nothing exists to support the application in this regard.

As matters stand, the appeal has abated.

The question is whether the appeal can be revived. The Court has power, for good reasons, to revive an appeal or extend time for filing the Record of Appeal as held in **Leo Sila Mutiso v Rose Mwangi, Court of Appeal, Nairobi, Civil Application 251 of 1997** and **Issa Mwabumba v Alice Mutunga & 4 others, Mombasa, Court of Appeal, Civil Appeal 287 of 2006 [2012] eKLR**. However, the applicant must establish a good cause. Efforts to have the appeal heard without further delays must be demonstrated.

The appellant must demonstrate sufficient cause to prosecute the appeal as held in **Janen Njeri Wachacha & another v James Kariuki Ng'ang'a [2015] KEHC 3801 (KLR)** and **Sophia Mustafa v Zulfa Ngasia Juma & another [2015] KEHC 2178 (KLR)**.

Granted that the appeal has abated, this court is not without a remedy to see to it that justice is done.

**In exercise of the discretion alluded to hereinabove, I hereby issue an order to have the appeal revived and further extend time to the Appellant to take the necessary steps to file and serve the full Record of Appeal within 14 days lapsing on 6 March 2026; failure**

**to which, the orders issued on 22 October 2025 shall apply. In this regard, the appellant shall meet the respondents' costs assessed at Ksh. 20,000 to be paid within 14 days.**

**Mention on 9 March 2026 for further directions.**

Delivered in open court at Mombasa, this 19th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

..... and .....