

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT NAKURU  
APPEAL NUMBER E063 OF 2024**

**BETWEEN \_**

BIASHARA MASTERS SAWMILLS LIMITED ..... APPELLANT

**AND \_**

FRANCIS SHIKUTWA ..... RESPONDENT

**RULING**

1. This Appeal was scheduled for mention on 3rd October 2025.
2. Earlier on, 22nd July 2025, the Appeal was mentioned in the absence of the Appellant, when a consent order on deposit of security, was recorded.
3. The same month, on the 29th, the Appellant was again absent when the Appeal came up for mention. Lack of proceedings of the Trial Court, was holding back the Appellant from preparing and filing the Record of Appeal, and it was ordered that the Record be filed within 45 days, with or without the Proceedings of the Trial Court.
4. The next mention date was 3rd October 2025, when the Appellant was again absent.

5. The Respondent informed the Court that the Record of Appeal had not been filed as ordered, and applied for striking out of the Appeal, and release of deposited security. The application was granted, in the absence of the Appellant, who had on more than one occasion, demonstrated a lack of alacrity, in prosecuting the Appeal.
6. The Appellant filed an application dated 15th October 2025, seeking setting aside, or stay of execution, of the orders made on 15th October 2025, and for reinstatement of the Appeal.
7. The application is founded on the affidavit of the Appellant's Counsel, Kellen W. Kimure, sworn on 15th October 2025.
8. She explains that her absence from the Court on 5th October 2025 was not intentional. She states that it was due to human error. She failed to diarize the mention date. She assures that the Appellant has always been keen to prosecute the Appeal.
9. She further explains that she was bereaved, and only came to learn that the Appeal had been struck out, when she returned to office from the bereavement.
10. The application is opposed by the Respondent, through his affidavit sworn on 11th November 2025. He states that the decretal sum, held in the Parties' Advocates' joint-interest earning bank account, in accordance with their consent order, was released to the Respondent's Advocate, following the striking out of the Appeal.

11. His Advocates subsequently released the amount to him through M-pesa. The Appeal has been overtaken by events. He prays that the application is dismissed with costs.
12. Parties agreed to have the application considered and determined on the strength of their affidavits and submissions. They confirmed filing and exchange of submissions at the last mention on 27th January 2026.

**The Court Finds: -**

13. Granted the Appellant's failure to attend Court on multiple occasions, pointed out by the Court in this ruling, it is hard to believe that the last failure to attend Court, was due to inadvertence or bereavement of Counsel.
14. The record betrays a practice and pattern of non-attendance on the part of the Appellant's Counsel.
15. She explains on the one hand that she was bereaved, and on the other hand, that failure to attend Court was occasioned by error in diarizing. Her affidavit indicates that she works for a Lawfirm with more than one Advocate, and there was no reason why, no other Advocate could hold her brief, assuming that bereavement was the cause for non-attendance.

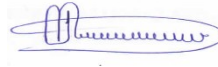
16. She assures that the Appellant has always been keen to prosecute the Appeal, an assurance without support from the proceedings of 22nd July 2025, 29th July 2025 and 3rd October 2025.
17. The Court notes that a Record of Appeal dated 16th October 2025, was filed. The date of filing is not clear from the record, but the date on the Record of Appeal, 16th October 2025, suggests that the Record of Appeal was filed outside the time given by the Court on 29th July 2025, of 45 days.
18. There was no further leave granted to file the Record of Appeal. By the time the Record was filed, on or around 16th October 2025, the Appeal had already been struck out, on 3rd October 2025.
19. In the end, the Court has no reason to revisit its orders made on 3rd October 2025

**IT IS ORDERED: -**

- a. ***The application dated 15th October 2025 is declined.***
- b. ***The file is closed.***
- c. ***No order on the costs.***

Dated, signed and delivered electronically at Nakuru, under Rule 68 [5] of the E&LRC [Procedure] Rules, 2024, this 27th day of February 2026.

James Rika  
Judge

A handwritten signature in blue ink, appearing to read 'James Rika', with a decorative flourish underneath.