

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL NO. E313 OF 2024

(Before D. K. N. Marete)

CENTAURUS COMPANY LIMITED.....APPELLANT

AND

ONESMUS MUSEMBI MUSYOKA.....RESPONDENT

RULING

This is an application dated 19th June 2025 and comes out as follows;

1. *That the applicant be allowed to lodge a cross appeal within 7 days from the date of the order hereof.*
2. *That the costs of this application be in the cause.*

It is grounded on the fact that there is a subsisting appeal and the appellant is fully compliant with its terms. Due to the nature of the operations of the appellant, the applicant was not certain of the possible outcome of execution, if at all. They now want to bring in a cross appeal on the basis of the soundness of the Respondent as demonstrated by a deposit of the decretal sum.

The Applicant posits that the Appellant is not operational on the ground and were not sure if the Appellant was serious with the appeal or was merely applying delay tactics to evade its obligations under the decree. There was no certainty on the availability on the decretal sum or even how it could be executed, the Appellant having closed shop.

In the penultimate the Applicant avers that the Appellant took all its time until 21st May 2025 to comply with the order on deposit of security pending hearing and determination of the appeal. This has not taken off and the trial court's file has not been availed and therefore, the Appellant does not suffer any prejudice. It is only fair and just that these orders are granted as prayed.

The Appellant/Respondent opposes the application for want of merit and being misconceived and prays that it be dismissed with costs.

It is their case that the trial court in this cause delivered judgement on 3rd December, 2021 in favour of the Respondent/Applicant with an award of Kshs 1,257,082.89. An appeal was preferred and had and this determined on 29th January, 2026 with partial success and a variation of the award on leave to Kshs. 32,669.28 on 30th July, 2025, a deposit of Kshs. 1,473,884.00 pursuant to a ruling of this court dated 24th July, 2025.

The Appellant/Respondent now intends to appeal against the judgment of the trial court dated 29th January, 2026 and have filed a Notice of Appeal dated 30th January, 2026 together with a letter seeking typed proceedings of 29th instant. This is an arguable appeal as is visible from the attached Memorandum of Appeal. This therefore goes to oppose a release of the decretal sum of Kshs. 1,473,884.00 deposited in court since such release would render the intended appeal nugatory. Such denial of a release of the decretal sum deposited would not prejudice the Applicant, or at all.

The Respondent/Applicant in submission posits that the judgment of the trial court was delivered on 4th October, 2024 and they opted not to file a cross appeal as they were ready to live with the judgement. This is despite the fact that some awards were declined by the court. This was due to the fact that the Appellant had closed shop and the Applicant was not sure if he would be paid the sum of the award or was engaging in exercise in futility.

The Appellant expressed partial compliance with the court orders on security by a deposit of the decretal sum six months down the line therefore inspiring the Applicant to do a cross appeal as there was some light at the end of the tunnel. This is the genesis and birth of this application. The delay in so doing has been adequately explained in that it is the Appellant/Respondent who from day one failed to demonstrate that they were serious in satiating the court orders and further, they were not operational on the ground. Here, they seek to rely on the authority of **Wasike vs Swala [1984] KLR 591** where the courts upheld the requirements of extension of time as, merit in the appeal, lack of prejudice to the Respondent and that there has not been inordinate delay in filing the application.

The Respondent on the other hand opposes the application noting that this application is brought out over eight months after the judgment of the trial court yet the Applicant all this time knew whether or not he intended to appeal against it. The Applicant has in their case and submissions been categorical that he was prepared to live by the decision of the court until the Appellant/Respondent complied with the orders of court on depositing the decretal sum. This is an indicator that all this time, the Respondent/Applicant did not fault the decision of court and only came in to pursue this application on realizing the Appellant had preferred an

appeal and could settle the decretal sum. This is in itself an abuse of the court process and an afterthought which should be chastised by this court.

The Appellant/Respondent further submits that their ability to meet the decretal sum or otherwise should not have stopped the Respondent/Applicant from filing this application if he believed it stood on good grounds and the decision of the court was erroneous. This cannot now be termed as a valid ground for extension of time. This is illustrated in the authority of **Alibhhai Musajee vs. Shariff Mohammed Al-Bet Civil Appeal No. 283 of 1998** where the court of appeal observed as follows:

“That whereas the Civil Procedure Act allows for extension of time for filing appeal, if good and sufficient cause shown, failure to act does not constitute a good or sufficient cause.”

The Appellant/Respondent further submits that rules and timelines in Civil Procedure exist for good measure and are not merely decorative. They ought to be followed strictly and courts should at all times strive to uphold the rules and if the reasons offered are not satisfactory, the court should not hesitate to dismiss the application. This is so in the instance case.

Moreover, and as is submitted by the Applicants, extension of time is not a right of a party, a sensible and viable reason must be offered to the satisfaction of the court in order to warrant the exercise of its discretion to issue orders of extension of time. In this case, the Applicants

does not meet the threshold for such extension and this application must therefore be disallowed to allow a way forward in the appeal.

Again, the cross appeal has no valid or arguable grounds of appeal. It is frivolous and vexatious as clearly comes out of the intended cross-appeal annexed to the Applicant's supporting affidavit. The issues raised therein were properly and adequately addressed by the trial court and would not change even in the event of an appeal. This is a waste of time as the appeal does not display valid and arguable grounds of appeal.

This application outrightly sways in favour of the Appellant/Respondent. The application does not meet the threshold and criterion for employment of this court's discretion in favour of the application. This is because, like is submitted by the Respondent, there is inordinate delay on the part of the Applicant in filing the application. Two, this application comes out as an afterthought, the Applicant having confessed that all this time, they were content with the outcome and judgment of the trial court until the Appellant responded to an order for deposit of the decretal sum thereby indicating ability to pay or meet the decree.

Last but not least, the cross-appeal as brought does not disclose an arguable appeal. It is not sounding and in our estimation does not stand much ground as to warrant this court's attention at this stage. This is because the issues raised were addressed by the trial court to fruition and would not make a lot of difference at appeal.

I am therefore inclined to dismiss the application with costs to the Appellant/Respondent

Delivered, dated and signed this **25th** day of **February** 2026.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Ngala instructed by Ngala Morara and Company Advocates for the Respondent/
Applicant.
2. Mr. Wachanga instructed by J. M. Njenga & Company Advocates for the Appellant/
Respondent