

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT VOI

APPEAL NO. E001 OF 2025

**ANCHOR SECURITY SERVICES LIMITED
APPELLANT**

VERSUS

TOM MBOYA INDULULU AMBANI RESPONDENT

RULING

The respondent, Tom Mboya Indululyu Ambani, filed an application dated 9 October 2025 under Rule 51, Rule 1 of the Civil Procedure Rules, and Rule 15(2) of the Employment and Labour Relations Court (Procedure) Rules (the Court Rules) seeking orders that:

- 1. This court be pleased to issue an order striking out the Memorandum of Appeal by the appellant dated 7 August 2025, for failure to comply with mandatory provisions of Rule 15(2) of the Employment and Labour Relations Court (Procedure) Rules, 2024.*
- 2. This court be pleased to issue any other relief it deems fit, just in the interests of justice.*
- 3. Costs of this application be provided for.*

The application is supported by the respondent's Supporting Affidavit, which avers that the trial court delivered judgment on 9 July 2025, and that the appellant has not yet requested the proceedings thereof. The last case activity recorded on the e-filing system was on 27 August 2025, when the respondent filed submissions on the Bill of Costs.

Despite the respondents' awareness that appeals are governed by strict timelines, the Memorandum of Appeal dated 7 August 2025 was filed with the Record of Appeal because the judgment had already been delivered. Under Rule 15(2) of the Court Rules, the appellant has failed to comply with the procedural timelines. The appeal before the court is thus a nullity and cannot proceed. The appellant has not moved the court to seek a time extension.

The respondent argues that the appellant's prolonged uncertainty has denied him the fruits of his judgment from the trial court. Unless the orders sought are granted, the respondent will continue to suffer prejudice.

The appellant attended on 22 January 2026 but failed to file a Replying Affidavit or written submissions.

On 26 January 2026, the appellant attended and sought to file the Record of Appeal, file the Relying Affidavit and written submissions. There was no compliance.

Determination

Under section 17 of the Employment and Labour Relations Court Act, upon the judgment of the trial court, an appellant is allowed 30 days to file an appeal. Under Rules 12 and 15 of the Court Rules, an appellant is allowed 30 days to file the Memorandum of Appeal together with the Record of Appeal.

Where the appellant is unable to file the Record of Appeal in time, Rule 15(2) of the Court Rules allows the appellant 60 days to file the same:

(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 tabulation of time for the 60 days is the date the impugned judgment or ruling was delivered.

In this case, the trial court delivered judgment on 9 July 2025. The Memorandum of Appeal was filed on 7 August 2025.

The Record of Appeal has not been filed.

Under Rule 18 of the Court Rules, an appellant seeking to file the Record of Appeal out of time is allowed to move the court as appropriate:

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

The appellant has not moved the court as appropriate under Rule 15 or 18 of the Court Rules.

When the matter came up in court on 26 January 2026 for directions on the instant application, the appellant orally sought to file the Record of Appeal. The motions of Rules 15 and 18 of the Court Rules require the court to be moved for an extension of time. On 26 January 2026, the respondent had already moved the court to have the appeal struck out for want of compliance with the mandatory provisions of Rule 15(2) of the Court Rules as held in **Parapet Limited v Mwangoya & another [2025] KEELRC 2809 (KLR)**.

Since 9 July 2025, the appellant has neither filed the Record of Appeal nor sought a time extension to do so. In essence, the appeal has been instituted by operation of law. The court is allowed, on its motion, to strike out the appeal or, upon being moved by the parties, strike it out.

In this case, the respondent's application dated 9 October 2025 is meritorious. The lapse by the appellant to file the Record of Appeal cannot be justified. The appeal herein is struck out. Costs to the respondent/applicant.

Delivered in open court at Mombasa, this 12th day of March 2026.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Omar

..... and