

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

MISC. APPLICATION NO. E154 OF 2025

LAKE GAS LIMITEDAPPLICANT

VERSUS

**LEVI BOAZ OMOIT
RESPONDENT**

RULING

The applicant filed an application dated 22 December 2025 under the provisions of Rule 11 of the Employment and Labour Relations Court (Procedure) Rules and Article 159(2)(d) of the Constitution seeking orders that there be a stay of execution of the judgment of the trial court in Mombasa MCELRC No. E414 of 2023 delivered on 17 September 2025. Further, leave be granted to file an appeal out of time.

Immaculate Were filed the Supporting Affidavit and avers that, on 17 September 2025, the trial court delivered judgment against the applicant and aggrieved, they wish to file an appeal. However, the former advocates attended before the trial court filed a Notice of Appeal rather than a Memorandum of Appeal, and by the time the applicant realised the same, the time to file an appeal had lapsed.

Were avers that the appellant has since appointed new advocates to prosecute the appeal. There are triable issues in the appeal arising from the trial court's judgment. The applicant stands to suffer loss and damage if the orders sought are not granted. There will be great prejudice where the order of stay of execution is not allowed.

In reply, the respondent filed his Replying Affidavit, stating that he filed suit on 19 July 2023 following the applicant's unfair termination of employment. The trial court delivered judgment in his favour on 17 September 2025. The advocates for the applicant requested banking details to settle the decretal sum, but instead filed a Notice of Appeal and failed to make payment.

The respondent avers that he filed a statement of costs and served the applicant, which led to the filing of the instant application. This is meant to delay the execution process. The delay in filing an appeal in time has not

been addressed. There is no reason that exists to justify the grant of the orders sought.

The parties attended and made oral submissions.

Determination

Upon the judgment of the trial court, the applicant had 30 days' right to file an appeal under section 17 of the Employment and Labour Relations Court Act. This is in tandem with Rule 12 of the Employment and Labour Relations Court (Procedure) Rules (the Court Rules).

Where no appeal is filed within time, a party is guided 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.

Reliance should not be on Rule 11 as done by the applicant herein.

In this case, the applicant asserts that, upon the trial court's judgment on 17 September 2025, the advocate attending filed a Notice of Appeal instead of the Memorandum of Appeal under ELRCA No. E209 of 2025, which was in error, and the matter has since been addressed and withdrawn. However, the time to file an appeal lapsed, leading to these proceedings.

Indeed, a miscellaneous application such as herein should address a single fact. The question of leave to file an appeal out of time.

On the given facts, the applicant having moved without delay, it is fair and just to extend the time to file the appeal out of time.

However, such time will be conditional in terms of Rule 15 of the Court Rules, which requires the applicant as the appellant to file the Record of Appeal within 60 days from the date the judgment in question was delivered. Such time has since lapsed.

In this case, the applicant shall have 14 days' leave to file an out-of-time appeal. Such time lapses on 20 February 2026. In view of Rule 15 of the Court Rules, the additional condition is to file the Record of Appeal within the same timeline.

On the prayer seeking a stay of execution of the trial court judgment, as addressed above, the issue is single under the miscellaneous application. A stay of execution should first be secured before the trial court.

Without any appeal on record being actualised, ordering a stay of execution in these proceedings would mar the issue and lead to chaos.

The applicant is at liberty to file the appeal within the timelines addressed above and seek orders of stay of execution under the substantive appeal or move the trial court in that regard.

Accordingly, the application dated 22 December 2025 is allowed to the extent:

- a) The applicant is given 14 days' leave to file an appeal out of time.**
- b) Compliance must be by 20 February 2026.**
- c) Upon a) and (b) above, file the Record of Appeal within the same timeline.**

Application dated 19 January 2026 is hereby struck out. No orders on costs.

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

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Omar

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