

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: NDERI, JA (IN CHAMBERS))**

**CIVIL APPEAL (APPLICATION) NO. E017 OF**

**2025 BETWEEN**

**TIMOTHY KIHAMBA KEVERENGE.....APPLICANT**

**AND**

**HON. CECILY MBARIRE ..... 1<sup>ST</sup>  
RESPONDENT DENIS HEDMOND APAA.....2<sup>ND</sup>  
RESPONDENT**

*(Being an appeal from the Judgment of the Employment and Labour  
Relations Court (D.K. Njagi Marete, J.) delivered on 24<sup>th</sup> April 2024*

**in**

**Case No. 881 of 2021)**

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**RULING**

1. The application dated 17<sup>th</sup> January 2025 before court by **Timothy Kihamba Keverenge**, seeks the court to determine whether leave should be granted to the appellant to prosecute his appeal in *forma pauperis*. The application is brought under Order L Rule 1 and Order XXXII Rules 1 and 2 of the Civil Procedure Rules, section 3A of the Civil Procedure Act, and Rule 115 of the Court of Appeal Rules, 2022.

2. The appellant seeks exemption from payment of filing fees and security for costs amounting to Kshs 107,500/=, asserting that he is indigent. He has sworn an affidavit in support of pauperism, dated 17<sup>th</sup> January 2025, annexed a letter from the Senior Chief of Ngando Location certifying that he has no regular income, and filed a Statement of Pauperism confirming that he owns no property and has no employment.
3. Rule 115 of the Court of Appeal Rules, 2022 requires an applicant to demonstrate two things: first, genuine indigence and inability to pay the requisite fees or deposit security for costs; and second, that the intended appeal is not frivolous but raises arguable grounds. Rule 120(1) complements this by providing that no appeal shall be admitted unless fees and security are paid, “unless the Court otherwise orders,” thereby preserving judicial discretion to exempt indigent litigants where justice so demands.
4. The constitutional underpinning of the application is Article 48 of the Constitution, which guarantees access to justice and obligates the State and the courts to ensure that financial constraints do not bar litigants from pursuing their rights.

5. This Court has consistently emphasized that a bare assertion of poverty is insufficient. In **Peter Onditi Ogugu v Allpack Industries Ltd & Another, Civil Application No. NAI 147 of 2013**, the Court held that credible evidence must be placed before the Court to prove incapacity. Likewise, in **Jason Nyabuto Kembero v Siraj Sheikh Musdat, Civil Application No. NAI 152 of 2012**, the Court cautioned that Rule 115 is not intended to be used for academic pursuits or to vex opponents, and that the interests of the opposite party must be borne in mind, echoing the principle in **Apondi v Canuald Metal Packaging** [2005] 1 EA (CAK) that it would be unjust to expose respondents to litigation that is frivolous or doomed to fail.
6. On the constitutional plane, **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others** [2013] eKLR and **Kituo Cha Sheria v Attorney General** [2013] eKLR the Court underscored the duty of courts to facilitate access to justice for vulnerable persons.
7. Applying these principles, the appellant has provided corroborated evidence of indigence through his affidavit and the Chief's letter. Unlike applicants who have failed to

substantiate

their claims, he has demonstrated genuine incapacity.

8. On the second requirement, the appellant has already lodged a substantive appeal against the judgment of the Employment and Labour Relations Court delivered on 24<sup>th</sup> April 2024. The grounds disclosed are not frivolous and raise issues deserving consideration. The Court is therefore satisfied that both criteria under Rule 115 have been met.
9. Accordingly, the Court grants leave to the appellant to prosecute the appeal as a pauper. He shall be exempted from payment of filing fees and security for costs, and the annexed Memorandum of Appeal shall be deemed duly filed. This order is made pursuant to Rule 115 and Rule 120(1) of the Court of Appeal Rules, 2022, section 3A of the Civil Procedure Act, and in fidelity to Article 48 of the Constitution. Costs of this application shall abide the outcome of the appeal.

It is so ordered.

**Dated and delivered at Nairobi this 27<sup>th</sup> day of February 2026.**

**NDUMA NDERI**

.....  
**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

***Signed***

**DEPUTY REGISTRAR.**