



**Ndege v PS Ministry of Health & 2 others (Civil Application
E407 of 2025) [2026] KECA 420 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 420 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E407 OF 2025
HI ONG'UDI, JA
FEBRUARY 27, 2026**

BETWEEN

DR DAVID KAMAU NDEGE APPLICANT

AND

PS MINISTRY OF HEALTH & 2 OTHERS & 2 OTHERS RESPONDENT

(Being an application to be deemed withdrawn, the Notice of Appeal dated 23rd October, 2020 against the judgment by Employment & Labour Relations Court, (B. Ongaya, J) delivered on 23rd October, 2020 in Nairobi ELRC Petition No. 32 of 2020)

RULING

1. The applicant herein filed the Notice of Motion dated 15th October 2021 for an order that the respondent's Notice of Appeal dated 23rd October, 2020 and filed on the same day be deemed as withdrawn. The main ground is that despite filing the Notice of Appeal, the respondent has not filed any appeal even after having requested for certified copies of proceedings. The application is further supported by the applicant's detailed affidavit sworn on 15th October, 2021.
2. Stephen Khaemba, the Permanent Secretary at the Ministry of Health filed a replying affidavit sworn on 7th December, 2021. He blamed the delay in filing the appeal on a clerical officer one Bernard Mutunga from the Attorney General's office. The said clerk allegedly collected the typed proceedings and disappeared with them never to be seen again. He averred that the respondents had an arguable appeal.
3. No submissions were filed by either party. A hearing notice for 25th February, 2026 was issued and served on the parties on 9th February, 2026 at 11.05 am via email.
4. On record is a letter dated 27th February, 2025 Ref No. MOH/PH/FIN/BUDGET/VOL. III (80) from the Ministry of Health addressed to Dr. Chris K. Kiptoo, the Permanent Secretary, National



Treasury and Economic Planning. The author of the letter is Mary Muthoni Muriuki Permanent Secretary (P/S) Ministry of Health. A summary of the contents of the said letter is the request for funds to settle the judgment/decrees in Nairobi ELRC Petition No. 32 of 2020, Dr. David Kamau Ndege vs. PS Ministry of Health, Attorney General & Others. The said judgment is the subject of this appeal.

5. It is therefore clear that since the filing of the Notice of Appeal on 23rd October, 2020 to date, the Ministry of Health (1st respondent) has taken no steps to file the Memorandum of Appeal and Record of Appeal. This is over five (5) years delay.

Secondly, from the letter by the Permanent Secretary dated 27th February, 2025 it is clear that the 1st respondent is not serious about challenging the judgment and decrees by Ongaya Byram, J (as he then was).

6. I therefore, find merit in the Notice of Motion dated 15th October, 2021 which I hereby allow. The Notice of Appeal dated 23rd October, 2020 is deemed as withdrawn under Rule 85(1) of the Court of Appeal Rules, 2022. Costs to the applicant.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2026.

H.I. ONG'UDI

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JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR

