



**Bakari v Bacchus Grocers Limited (Miscellaneous Application
E014 of 2026) [2026] KEELRC 877 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KEELRC 877 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E014 OF 2026**

**M MBARŪ, J
MARCH 25, 2026**

BETWEEN

PATRICK KAHINDI BAKARI APPLICANT

AND

BACCHUS GROCERS LIMITED RESPONDENT

RULING

1. The applicant filed the application dated 27 January 2026 under the provisions of Rule 12 and 18 of the Employment and Labour Relations Court (Procedure) Rules, seeking leave to file the appeal out of time against the judgment delivered on 10 December 2025 in Mombasa CMELRC No. E217 of 2023.
2. The application is supported by the applicant's affidavit, which avers that he filed his claim against the respondent before the trial court in 2023, and that judgment was delivered on 10 December 2025. The trial court struck out his claim, stating that it was outside its jurisdiction because he was a member of a trade union.
3. The applicant did not receive notice of the judgment which was issued by the court. The last date the parties were in court was November 2025. The application was ailing at the time and did not attend court. He only returned to Mombasa on 23 January 2026 and issued his advocate instructions to file an appeal, but the time to do so had lapsed; hence, this application was filed immediately. Unless the orders sought are granted, the applicant will suffer loss and prejudice.
4. In reply, the respondent filed the Replying Affidavit of Hussein Chandabhai, a director, who avers that the trial court did not deliver judgment on notice as alleged. When the matter came up on 28 November 2025, the court fixed the same for judgment on 10 December 2025, as reflected on the record. The applicant and his advocate were aware of the judgment date. The allegations that there was no prior notice and that there was non-attendance are incorrect and misleading. Immediately upon delivery of judgment, it was uploaded to the CTS on 11 December 2025. Each party had access.



5. Hussein avers that neither an appeal nor a Notice of Appeal was filed. The allegation that the applicant received the file on 23 January 2026 is not correct. The delay in not filing the appeal in time is not properly explained. No efforts were taken by the applicant to urge his appeal for any reason. The time lapse is not addressed, and allowing the application will be productive for the respondent. The application should be dismissed with costs.
6. Both parties have filed detailed written submissions, which are analysed, and the sole issue for determination is whether leave should be granted to the applicant to file an out-of-time appeal.
7. The instant application is premised on Rule 12 and 18 of the Court Rules. Rule 12 allows a party 30 days to file an appeal against the trial court judgment or ruling. Where no appeal is filed in time, under Rule 18 of the Court Rules, a party may move the court for extension of time:
 18. The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.

This Rule is akin to Section 95 of the *Civil Procedure Act* that requires that:

 95. Enlargement of time

Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.
8. In this case, the trial court delivered judgment on 10 December 2025. 3 days to file an appeal lapsed on 11 February 2026 in view of tabulation of time under Order 50 rule 4 of the Civil Procedure Rules, which stipulates:

“Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the Court) for the amending, delivering or filing of any pleadings or the doing of any other act:

Provided that this rule shall not apply to any application in respect of a temporary injunction.
9. In this case, when the applicant filed the instant application, he was still within time to file an appeal. However, under the mistaken belief that time stopped running after the expiry of 30 calendar days, including days removed under the Rule, he has filed this application with caution. It was unnecessary at the time. With it, he lost crucial time to file his appeal in time. See *Onchwari v Kan Travellers* [2025] KEHC 19197 (KLR) and *Mutoro v Obala* [2025] KEHC 19055 (KLR).
10. Taking the above into account, the time to file an appeal is extended by only 14 days. The applicant shall further serve the Record of Appeal within the same time as he has had the benefit of time to organise himself in this regard. The applicant will also meet the costs due to the respondent.

Orders accordingly.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 25TH DAY OF MARCH 2026.

M. MBARŪ

JUDGE

In the presence of:



Court Assistant: Omar

..... and

