

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL NO. ELRCA NO. E194 OF 2025

RICHARD OKARI ORORI.....APPELLANT

VERSUS

KAMYN INDUSTRIES LIMITED.....RESPONDENT

(Being an Appeal from the Judgment/Decree of Hon. D. MILIMU (S.R.M) dated 19th day of May 2025,

in the original THIKA MCELRC E039 of 2023)

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The Appellant filed a claim, Thika ELRC NO. E039 of 2023 (hereafter referred to as The Primary Suit), in Thika Law Courts for pension compensation. The Respondent was served with a Memorandum of Claim along with a Summons to Enter Appearance. The primary suit proceeded to a hearing, and a final judgment was delivered on May 19, 2025. The Appellant was dissatisfied with the court's judgment or decree and filed this appeal against the Respondent through a Memorandum of Appeal dated June 13, 2025.

2. The Respondent filed a Notice of Cross Appeal dated August 26, 2025. The Appellant filed a Notice of Preliminary Objection on September 1, 2025, to strike out the Notice of Cross Appeal dated August 26, 2025, on the grounds that the Employment and Labour Relations Court (Procedure) Rules of 2024 clearly state that a cross appeal must be filed and served within 21 days of the service of the Memorandum of Appeal. This timeframe is specified under Rule 17(2) of the Employment and Labour Relations Court (Procedure) Rules.

3. The application was canvassed by way of written submissions. Only the appellant filed.

4. The Appellant submitted that it served the Respondent herein with the Memorandum of Appeal dated 13th June 2025, together with the Notice of Appeal dated 12th June 2025, via email dated 19th June 2025. (A copy screenshot of the service to the respondent's Advocate on record). The appellant stated that he was later served with a Notice of Appointment dated July 22, 2025 (located on page 310 of the record of appeal). The Respondent filed Notice of Cross Appeal dated August 26, 2025, after more than 21 days had passed since it was served with the Memorandum of Appeal. It is clear that the Respondent was served with both the Memorandum of Appeal and the Notice of Appeal, which led to the filing of the Notice of Appointment of Advocate.

5. The appellant further argued that after the Respondent filed her Notice of Appointment, took over 30 days to file the Notice of Cross-Appeal, assuming that they received both the Memorandum of Appeal and Notice of Appeal on the day they filed their Notice of Appointment dated July 22, 2025. The Respondent did not seek the court's permission to file the Notice of Cross-Appeal dated August 26, 2025. The ELRC (Procedure) Rules, 2024, governing the filing of appeals and cross-appeals are very clear, and the Respondent chose to violate these rules as applicable in this case. The Appellant petitioned that the Notice of Cross-Appeal dated August 26, 2025, be struck out and/or dismissed with costs to the Appellant.

Decision

6. The issue is whether the cross-appeal is proper. In legal proceedings, timelines are not just suggestions; they act as the "gatekeepers" of the court's jurisdiction. Where a party files a cross-appeal out of the statutory timelines, the consequences are dire. The most immediate consequence is that the court loses its jurisdiction to hear the cross-appeal. The right to cross-appeal is statutory. The time for filing a cross-appeal is specified in the ELRC (procedural) Rules 2024, specifically in Rule 17, which states — '17. Cross appeals

(1)The respondent may file and serve a cross appeal by way of a cross memorandum of appeal in Form 1 as set put in fee First Schedule with the necessary modifications, setting out the grounds of the cross appeal.(2)A cross appeal shall be filed and served within twenty-one days from the date of service of the memorandum of appeal.' It was not in dispute that the appellant filed notice of appointment dated 22nd July 2025(page 310 of ROA). The appellant states that the respondent was served with the memorandum of appeal and the notice of appeal on the 19th June 2025 (a copy of the email service was attached to the submissions). The

respondent then filed a notice of cross-appeal dated 26th August 2025, which was outside the 21 days. The court was persuaded to believe that the service was as stated, the respondent having filed a notice of appointment dated 22nd July 2025. The filing of the cross-appeal outside the statutory 21-day period without the court's leave was improper. The court lacks jurisdiction to consider the cross-appeal, which is time-barred. The preliminary objection dated 1st September 2025 is allowed with costs in the cause. The cross-appeal is struck off and expunged from the record.

7. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24TH DAY OF MARCH, 2026.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Applicant/Appellant - Ondigo

Respondent- absent