



**Lisumbu v Shomela (Appeal E038 of 2026) [2026] KEELRC 945 (KLR) (16 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 945 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**  
**APPEAL E038 OF 2026**  
**K OCHARO, J**  
**APRIL 16, 2026**

**BETWEEN**

**HENRY LISUMBU ..... APPELLANT**

**AND**

**SAFARO NGUMBAO SHOMELA ..... RESPONDENT**

**RULING**

1. By a Notice of Motion Application dated 27th February 2026, the Applicant has approached this Court, seeking the following orders;
  - a. That this Application be certified urgent and heard ex parte in the first instance.
  - b. That the Applicant herein be granted leave to appeal out of time.
  - c. That pending the hearing and determination of this Application, there be a stay of execution of the judgment delivered on 28th February 2025 and all consequential orders.
  - d. That this Honourable Court be pleased to review and or set aside the Judgment delivered on 28th February 2025.
  - e. That upon review, this Honourable Court be pleased to reopen the Applicant's case for purposes of allowing the Applicant to testify and adduce evidence.
  - f. That upon review, this Honourable Court be pleased to grant a stay of execution pending the hearing and determination of the intended appeal. g) That costs be in the cause.
2. The Respondent neither filed grounds of opposition nor a reply affidavit, as required by law. However, this did not in any way lessen the Applicant's burden of establishing his application.
3. I must state from the outset that the application is couched in a very ambiguous manner, as if it were largely intended for consideration by the lower Court. Prayers 3, 4, 5, and 6 of the application are those



that this Court cannot expend its precious time to consider. They aren't for the jurisdiction of this Court. They are hereby declined.

4. By reason of the premises, only prayer 2 of the application remains outstanding for consideration by this Court. The primary grounds relied upon by the Applicant centre on the alleged negligence or inaction of his former legal counsel, whom the Applicant claims failed to take the necessary steps to keep him informed of the status of the lower court proceedings at every vital point, including the hearing date, the requirement to attend court to give evidence, and the entry of judgment against him.
5. In considering an application for an extension of time, the Court exercises its judicial discretion. However, this discretion is not exercised in a vacuum; it must be guided by established principles, namely: the length of the delay, the reason for the delay, the likelihood of the appeal succeeding, and the degree of prejudice to the Respondent.
6. While this Court acknowledges that mistakes of counsel cannot be visited on their client and, in specific circumstances, may be a ground for granting an extension of time to do an act, it is a settled principle of law that cases belong to the parties, not to their counsel. A litigant has a duty to remain vigilant and proactive in the pursuit of their matter. In this instance, the Applicant has failed to demonstrate:
  - a. The specific efforts made to follow up with his former counsel.
  - b. Evidence of any communication or visits to the counsel's chambers to ascertain the status of the lower court suit.
  - c. credible explanation for the significant period of silence between the judgment and the filing of this application.
7. The Burden of Proof. The burden lay squarely on the Applicant to provide a "sufficient explanation" for each day of the delay. Passive reliance on an advocate, without any showing of personal diligence, does not constitute a sufficient reason. To hold otherwise would diminish the essence of, and the insistence on, the statutory timelines for appeals by a simple plea of "counsel's mistake."
8. The Court finds that the Applicant was indolent. Litigants must realise that the seat of justice is not a place for those who sleep on their rights. Having failed to provide a satisfactory explanation for the delay or to show that at all material times he acted as a diligent litigant, the Court finds the application to be without merit. It is hereby dismissed.

**READ, SIGNED AND DELIVERED THIS 16TH DAY OF APRIL 2026.**

**JUDGE**

**OCHARO KEBIRA**

