

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

ELRC APPEAL E137 OF 2024

SPRINT SECURITY LIMITED.....APPELLANT

VS

KENNETH OTIENO CHACHA.....RESPONDENT

RULING

1. Via the Amended notice of motion dated 19th June 2025, the Appellant prayed for orders that;

- a) The matter be certified urgent service be dispensed with in the first instance in order to be heard exparte.
- b) The Honourable court be pleased to review, discharge, set aside and or vary its Ruling and Orders made on 12th May 2025 dismissing the appeal and 16th June 2025 for release of the decretal amount deposited in court and reinstate the appeal and deem the record of appeal dated 13th June 2025 as duly filed.
- c) That there be issued an order of stay of execution of the Ruling and order made on 12th May 2025 dismissing the appeal and 16th June 2025 for release of the decretal amount deposited in court pending inter parties hearing and determination of this application.
- d) That leave be granted to the Appellant to amend its Memorandum of Appeal.
- e) Costs be borne by the Respondents.

The Application dated 19th June 2025

2. The Appellant/Applicant states that the application arises from the dismissal of the appeal on 12th May 2025 on two grounds: that the Record of Appeal had not been prepared and filed, and that the Appellant had allegedly failed to deposit the decretal amount as required by the court's order of 29th August 2024.
3. The Appellant states that it has since filed the Record of Appeal dated 13th June 2025, thereby addressing the issue that led to the dismissal. It further asserts that the decretal amount had in fact been deposited, a fact known to the Respondent at all material times, as evidenced by their letter dated 15th May 2025 and application dated 3rd June 2025, notwithstanding their contrary position taken in open court on 12th May 2025.

4. In any event, the Appellant argues that failure to deposit the decretal sum would not warrant dismissal of the appeal, but would merely expose the appeal to execution pending appeal.
5. The Appellant contends that the delay in filing the record of appeal was not inordinate. As of the date of dismissal, the appeal was only ten months old. The delay was occasioned by the unavailability of typed proceedings, an administrative function of the court beyond the Appellant's control.

The Response to the Application

6. The Respondent opposes the application by way of a replying affidavit, sworn on 21st July 2025. The Respondent contends that the application is fatally defective, misconceived in law, and an abuse of the court process.
7. He states that the appeal was dismissed on 12th May 2025 due to the Applicant's failure to comply with court conditions and for want of prosecution, and that the present application improperly seeks to revisit that dismissal without a proper legal foundation.
8. The Respondent argues that the initial application for reinstatement is incompetent for failing to invoke the correct legal provision, namely Rule 99 of the Court of Appeal Rules, 2022, which governs the reinstatement of dismissed appeals. Instead, the Applicant relied on provisions of the Civil Procedure Act and Rules that do not confer such jurisdiction.
9. The Respondent maintains that the application does not meet the threshold under Order 45 Rule 1 of the Civil Procedure Rules, as it does not demonstrate discovery of new evidence or an error apparent on the face of the record. Rather, it is an attempt to re-litigate a matter that has already been conclusively determined, contrary to the doctrine of *functus officio*. He emphasises that once the appeal was dismissed, the only lawful recourse available to the Applicant was a properly grounded application for reinstatement, which has not been pursued.
10. The Respondent further asserts that the appeal was incompetent due to procedural noncompliance, noting that it was dismissed more than ten months after filing, well beyond the timelines set out in Order 42 Rule 13 of the Civil Procedure Rules. He adds that the Record of Appeal was filed out of time without leave, rendering it a nullity, and that the Applicant failed to demonstrate any effort to obtain typed proceedings or to comply with procedural requirements. This reflects culpable inactivity rather than excusable delay.
11. Finally, the Respondent asserts that the judgment of the lower court was in his favor and that the decretal sum had been deposited pending appeal. With the dismissal of the appeal and the expiration of the stay orders, he is entitled to the immediate release of the funds, contending that the current application merely serves to delay his enjoyment of the judgment in the lower court.

Appellants/Applicants Submissions

12. The Appellant submits that the court has discretion to reinstate the appeal and deem the Record of Appeal as properly filed. It is argued that although there was a delay in filing the Record of Appeal, the same has now been filed, and the

delay should not bar the Appellant from being heard on merit. The Appellant relies on *Joseph Kinyua v G.O. Ombachi*, HCCA No. 82 of 2017 (Meru).

13. The Appellant contends that reinstatement would not prejudice the Respondent. However, it would serve the wider interests of justice and fairness.
14. The Appellant further submits that it should be granted leave to amend its Memorandum of Appeal under Order 42 Rule 3 of the Civil Procedure Rules. Granting leave will not cause any prejudice to the Respondent. The Appellant maintains that, upon reinstatement of the appeal, it will promptly file the amended memorandum.

Respondent's Submissions

15. The Respondent, in opposition to the Amended Application dated 19th June 2025, submits that the application is procedurally defective, legally unsustainable, and an abuse of the court process, and should therefore be dismissed with costs.
16. The Respondent contends that the appeal, filed on 1st July 2024, was dismissed on 12th May 2025 due to prolonged inactivity, failure to comply with procedural requirements under Order 42 of the Civil Procedure Rules, and failure to demonstrate deposit of the decretal sum, justifiably. The appeal having been dismissed, the subsequent orders issued on 16th June 2025 for the release of the decretal merited.
17. It is further submitted that the application fails to satisfy the requirements of Order 45 Rule 1 of the Civil Procedure Rules, as it neither discloses new evidence nor identifies any error apparent on the face of the record. Instead, it is an attempt to re-litigate the matter through review, which is impermissible. To buttress this submission, reliance has been placed on *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR.
18. The Respondent further submits that the dismissal of the appeal was proper, as the Applicant failed to take the necessary steps to ensure prosecution of the appeal within the timelines prescribed under Order 42 Rule 13. Further, to demonstrate any effort they made to obtain typed proceedings. The delay, spanning over ten months, is inexcusable and indicative of culpable inaction rather than procedural misfortune. Reliance is placed on *Daniel Wambura v Republic* (Supreme Court Petition No. 4 of 2019), to buttress the submission that courts seldom condone indolence.
19. The Respondent argues that the doctrine of *functus officio* militates against the Appellant's application. The Applicant's attempt to reopen the matter through review is therefore legally impermissible.
20. Finally, the Respondent submits that the application amounts to an abuse of court process intended to delay the release of the decretal sum lawfully due to him following the dismissal of the appeal and lifting of stay orders. The continued withholding of the funds prejudicial to him.

Analysis and determination

21. From the outset, it is essential to note that the Appellant's contention that the dismissal order was based on two grounds is entirely unfounded. The Appeal was dismissed on one ground, namely want of prosecution for failure to file a record of appeal, despite the lengthy indulgence the Court had afforded the Appellant.
22. Inarguably, the Appellant's application calls upon this Court to exercise its jurisdiction to review orders. However, it must be noted that this jurisdiction is fettered; it is exercised only in favour of an Applicant within the express parameters set out by the law.
23. An application for review only succeeds where the Applicant demonstrates that he or she has discovered new and important evidence not available at the time of the decision, or that there is an error apparent on the face of the record, or that there is a sufficient reason to justify the review.
Moreover, the application has been filed without unreasonable delay.
24. The Court of Appeal case in *National Bank of Kenya Ltd vs Ndungu Njau* (2001) eKLR, explained that:
"A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."
25. I have carefully considered the Appellant's application, the grounds upon which it is premised, and the affidavit in support thereof, and hesitate not to conclude that none of the grounds recognised by law forms the basis of the instant application. None of them has been established by the Applicant. The Application must fail, therefore.
26. This Court is cognizant of the fact that it has the requisite jurisdiction to extend time for the filing of documents. The record of appeal herein was filed after the appeal had been dismissed, without leave of the court. Further, no extension of time for filing the same out of time, with a consequential order of deeming it duly filed, has been sought.
27. For clarity of record, I find it important to point out that even if the extension had been sought, this Court would still decline the application, considering the length of the indulgence, more than 90 days, this Court afforded the Appellant to comply and file the record of appeal, but which indulgence was abused, and the fact that the Appellant hasn't shown that he diligently followed up the typed proceedings of the lower court. Judicial discretion is rarely exercised in favour of indolent litigants.
28. In the upshot, I find the application lacking in merit. It is hereby dismissed.

Read Signed and Delivered this 23rd Day of April 2026.

OCHARO KEBIRA
JUDGE