

**IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: MURGOR, LAIBUTA & NGENYE,
JJ.A.) CIVIL APPLICATION NO. E093 OF 2025**

BETWEEN

KENYA ORIENT INSURANCE CO. LIMITED.....APPLICANT

AND

LINSTONE JOHN ALUBALE & LEAH AYUMA MBANDU

(Suing for and on behalf of SILVANO OKILI MBANDU

Deceased..... 1st

RESPONDENT SAMUMU CONSTRUCTION SERVICES

LIMITED..... 2ND RESPONDENT

*(Being an application for stay of execution pending appeal against
the Ruling and Orders of the Employment and Labour Relations
Court at Mombasa (Monica Mbaru, J.) dated 30th June 2025*

in

Misc. Case No. E013 of 2025)

RULING OF THE COURT

1. The 1st respondent, Linstone John Alubale and Leah Ayuma Mbandu (suing for and on behalf of the estate of Silvano Okili Mbandu (deceased), lodged a work injury compensation claim with the Director of Occupational Safety and Health Services, Mombasa (the Director), against the 2nd respondent, Samumu Construction

Services Limited, following the demise of the deceased in consequence of work-related injuries.

2. By an award dated 11th March 2024, the Director awarded the 1st respondent Kshs. 1,152,000 as well as “reasonable burial expenses” assessed at Kshs. 654,200 together with interest at court rates from the date of the award until payment in full.

3. By a Miscellaneous Application dated 31st January 2025, the 1st respondent moved the Employment and Labour Relations Court (the ELRC) at Mombasa in ELRC Misc. App. No. E013 of 2025 praying that the award be adopted as a judgment of the court.

4. By a Notice of Motion dated 21st February 2025, the 2nd respondent applied to the ELRC for orders to join the applicant as party to the 1st respondent’s Motion aforesaid, and that the applicant be ordered to satisfy the sum assessed by the Director in favour of the 1st respondent.

5. When the 2nd respondent's Motion came up for hearing on 27th March 2025, the applicant was unrepresented despite having been duly served with both the Motion and the hearing notice. As is evident from the record as put to us, neither did the applicant file any response or written submissions in opposition to the 2nd respondent's Motion.

6. Upon hearing the 2nd respondent's Motion, the ELRC allowed the 2nd respondent's Motion as prayed vide its ruling and orders dated 27th March 2025, which prompted the applicant to file its application dated 3rd April 2025 praying that the ruling and orders dated 27th March 2025 be set aside, and that it be granted leave to file a response to the 2nd respondent's Motion by way of a preliminary objection.

7. By a ruling dated 30th June 2025, the ELRC (Monica Mbaru, J.) dismissed the applicant's Motion dated 3rd April 2025 with costs, which prompted the applicant to move to this Court on appeal on 6 grounds set out in its Memorandum of Appeal dated 29th October 2025 faulting the learned Judge for: failing to consider whether the

applicant's intended response to the 2nd respondent's Motion raised issues worthy of consideration by the court; denying the applicant an opportunity to be heard; exercising her discretion wrongfully; failing to sufficiently consider the reasons adduced by the applicant as to why it did not attend court on 27th March 2025; failing to analyse whether the applicant's intended defence raised triable issue; and for considering extraneous factors and overlooking relevant factors.

8. By a Notice of Motion dated 29th October 2025, the applicant sought: (i) orders that the impugned ruling dated 27th March 2025 be stayed pending hearing and determination of its Motion; (ii) "stay of execution restraining the respondents from undertaking any actions that execute the ruling delivered by the Employment and Labour Relations Court on 27th March 2025 ..." pending hearing and determination of the intended appeal; and that costs do abide the outcome of the intended appeal.

9. It is instructive that, from the record as put to us, the Notice of Appeal dated 2nd July 2025 signifies the applicant's intention to

appeal the decision of the ELRC (Monica Mvaru, J.) dated 30th June 2025. However, a cursory look at the record does not disclose existence of any Notice of Appeal with regard to the ruling and orders of the ELRC dated 27th March 2025 sought to be challenged in the intended appeal to this Court. Simply put, the ruling and orders sought to be stayed pending hearing and determination of the intended appeal are those dated 27th March 2025 in respect of which no notice of appeal has been lodged.

10. In order to consider granting the orders sought in the applicant's Motion pending appeal, the Court must be satisfied that the applicant has successfully invoked the Court's jurisdiction. We hasten to observe that, although the impugned ruling and orders are dated 27th March 2025, the Notice of Appeal annexed to the applicant's affidavit in support of its Motion relates to the ruling and orders given on 30th June 2025.

11. We need not overemphasise the fact that a notice of appeal is a jurisdictional prerequisite. Addressing itself to the mandatory requirement to file a notice of appeal against the impugned

decision, the Supreme Court in **University of Eldoret and another v Hosea Sitienei and three others** [2020] eKLR

observed

at para 36:

“The filing of a notice of appeal is not premised on any occurrence or condition to be fulfilled by the appellant. The filing of a notice of appeal signifies the intention to appeal.”

12. On the authority of the decision in University of Eldoret and Sitienei case (ibid), it is true to say that, in the absence of a notice of appeal properly on record, the applicant herein is yet to express its intention to appeal against the ruling and orders of the ELRC dated 27th March 2025. Citing the Supreme Court decision in **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission and 7 others** [2014] eKLR, this Court had this to say in **Apungu Arthur Kibira v Independent Electoral and Boundaries Commission and 2 others** [2018] eKLR:

“A notice of appeal is a primary document to be filed outright whether or not the subject matter under appeal is

that which requires leave or not. It is a jurisdictional prerequisite."

13. Having carefully examined the record as put to us, the applicant's Notice of Motion dated 29th October 2025, the affidavit in support thereof, the written submissions and list of authorities of learned counsel for the applicant (M/s. Jengo Associates) dated 3rd December 2025 in support of the Motion, we reach the inescapable conclusion that the applicant's Motion is incompetent and is hereby struck out.

14. In view of the fact that none of the respondents responded to, or submitted on, the applicant's Motion before us, we make no orders as to costs. Orders accordingly.

Dated and delivered at Mombasa this 15th day of May, 2026.

A. K. MURGOR

.....
JUDGE OF APPEAL
DR. K. I. LAIBUTA CARb, FCIArb.

.....
JUDGE OF APPEAL
G. W. NGENYE-MACHARIA

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed
DEPUTY REGISTRAR