



**Equity Bank (Kenya) Limited v Wanyara (Civil Application
E011 of 2024) [2025] KECA 174 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KECA 174 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E011 OF 2024
AK MURGOR, KI LAIBUTA & GWN MACHARIA, JJA
FEBRUARY 7, 2025**

BETWEEN

EQUITY BANK (KENYA) LIMITED APPLICANT

AND

NICHOLAS KILILO WANYARA RESPONDENT

(Being an application to strike out the Notice of Appeal from the Judgment and Decree of the Employment and Labour Relations Court of Kenya at Mombasa (M. Mbaru, J.) delivered on 30th November 2023 in E.L.R.C Cause No. E070 of 2022)

RULING

1. By a Memorandum of Claim dated 1st September 2022 and filed in the Employment and Labour Relations Court at Mombasa in ELRC Cause No. E070 of 2022, the respondent, Nicholas Kililo Wanyara, sought compensation for alleged unfair termination by the applicant, Equity Bank (Kenya) Limited, together with costs and interest. It is not clear from the record as put to us whether the respondent's claim was defended.
2. In its judgment and decree dated 30th November 2023, the ELRC (M. Mbaru, J.) allowed the respondent's claim in the total sum of Kshs.481,205.71 less Kshs.529,111 found to have been previously owed to the applicant.
3. Dissatisfied by the learned Judge's decision, the respondent gave notice of his intention to appeal to this Court vide his notice of appeal dated 8th December 2023 and lodged on 11th December 2023. The notice of appeal was evidently served upon counsel for the applicant, M/s. Ameli Inyangu & Partners, on Monday 20th December 2023.
4. Thereafter, the applicant filed a Notice of Motion dated 13th February 2024 pursuant to rules 3, 42, 77(1) and 84 of the Court of Appeal Rules, 2020 (now rules 3, 44, 79(1) and 86 of the 2022 Rules)



seeking orders to strike out the respondent's notice of appeal dated 8th December 2023 on the allegation that the notice aforesaid was served upon them out of time on 1st February 2024, later than the period allowed under rule 79(1) of the Court of Appeal Rules.

5. The applicant's Motion was supported by the annexed affidavit of Mr. Fred O. Adhoch, learned counsel for the applicant, essentially deposing to the ground on which the application was anchored. In further support of the applicant's Motion, learned counsel filed written submissions dated 8th June 2024 citing 3 judicial authorities, which we have considered.
6. Opposing the Motion, the respondent filed his replying affidavit sworn on 4th October 2024 stating, inter alia, that his notice of appeal was served upon counsel for the applicant on 20th December 2023 as evidenced by the annexure marked "NKW2"; and that the annexure contains learned counsel's official stamp in acknowledgment of service.
7. In addition to the reply, learned counsel for the respondent, M/s. Kennedy Ngaira & Associates, filed written submissions dated 7th October 2024 submitting that the application is meant to deny the respondent the right to be heard, and that it ought to be dismissed with costs.
8. Rule 79(1) of this Court's Rules requires that a notice of appeal be served before or within 7 days from the date on which it is lodged. That rule reads:

79.(1) An intended appellant shall, before or within seven days after lodging notice of appeal under rule 77, serve copies of the notice on all persons directly affected by the appeal:
9. Where the notice is served out of time, the Court has power to strike it out on such application as is before us pursuant to rule 86 of the Rules of this Court, which reads:

86. A person affected by an appeal may, at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground –

 - a. that no appeal lies; or
 - b. that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days after the date of service of the notice of appeal or record of appeal, as the case may be.
10. In MAE Properties Limited vs. Joseph Kibe & Another [2017] eKLR, this Court had this to say on the timelines prescribed under the Rules:

We have said on numerous occasions that the Rules of Court exist for the purpose of orderly administration of justice before this Court. The timelines for the doing of certain things and taking of certain steps are indispensable to the proper adjudication of the appeals that come before us. The Rules are expressed in clear and unambiguous terms and they command obedience ...

Failure to comply with the timelines set invites sure consequences."
11. Having carefully examined the record as put to us, we are satisfied that the respondent's notice of appeal was served within 7 days in compliance with rule 79(1) taking account of the public holiday falling on 12th December 2023 and the weekend preceding the date of service thereof on 20th December 2023



under and by virtue of rule 3 of the Rules of this Court, which excludes the “excluded days” therein defined in computation of any period of time fixed by these Rules. Rule 3 reads:

3. Any period of time fixed by these Rules or by any decision of the Court for doing any act shall be computed in accordance with the following provisions—

.....

b. if the last day of the period is a Sunday or a public holiday (in this rule referred to as “excluded days”), the period shall include the next following day, not being an excluded day;

c. where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;...

12. In addition to the fact that the respondent’s notice of appeal was served in good time, the applicant’s Motion came too late in the day, that is, more than 30 days from the date of service of the notice as mandated by the proviso to rule 86. Either way, the applicant’s Notice of Motion dated 13th February 2024 is in itself incompetent and is hereby struck out with costs to the respondent. Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 7TH DAY OF FEBRUARY, 2025.

A. K. MURGOR

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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

