



**Amazon Motors Limited v Kihura (Civil Application  
E329 of 2024) [2025] KECA 529 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KECA 529 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E329 OF 2024  
M NGUGI, JA  
MARCH 21, 2025  
[IN CHAMBERS]**

**BETWEEN**

**AMAZON MOTORS LIMITED ..... APPLICANT**

**AND**

**ESTHER WANJIKU KIHURA ..... RESPONDENT**

*(Being an application for leave to file a notice of appeal, record of appeal and for leave to appeal out of time from the decision of the Employment and Labour Relations Court at Nairobi (S. Rutto J.) dated 3rd May 2024 in ELRC NO. E830 of 2023)*

**RULING**

1. In the application dated 13<sup>th</sup> June 2024, the applicant, <sup>Amazon Motors Limited, seeks</sup> leave to file a notice of appeal and record of appeal out of time. The application is brought under Articles 20(3)(a)(b), 48, 50, 159(2) (d) and 259(1) of the Constitution, section 3A and 3B of the Appellate Jurisdiction Act, and rules 4 and 77 of the Court of Appeal Rules, 2022. The grounds on which the application is based are set out on its face and in the affidavit sworn by Ms. Fiona Achieng, the applicant's Legal Officer, on 13<sup>th</sup> June 2024.
2. The applicant avers that it was dissatisfied with the decision of the trial court rendered on 3<sup>rd</sup> May 2024. It ought to have filed its notice of appeal by 17<sup>th</sup> May 2024. It was, however, unable to do so as it was unable to give instructions to its advocates due to the difficulty in convening a board meeting, given the diverse composition of its board and shareholding, comprising a body corporate with its main shareholding held in trust and one non-resident and a Kenyan director.
3. It is averred that by the time the board convened to deliberate on the judgment and formulate a cause of action, the deadline for filing the appeal had lapsed. The applicant avers that it was able to give instructions to its advocates to file an appeal against the said decision on 28<sup>th</sup> May 2024, but that a delay in filing the notice of appeal within the prescribed time had resulted.



4. The applicant avers that the impugned judgment on liability applies to six other cases as the case on which the judgment was rendered, ELRC No. E830 of 2021, had been selected as a test case; and that the decision will occasion substantial adverse financial consequences for the applicant.
5. The applicant avers that it has an arguable appeal and has annexed a draft memorandum of appeal, raising, among other complaints, that the impugned judgment misinterpreted the legal principles for determining constructive termination of employment as the trial court ignored the applicant's testimony; and that the trial court introduced a new cause of action that had not been pleaded which she used as a basis for the judgment. The applicant avers that it would be wrong to shut it out of court and deny it the right of appeal since the foregoing are substantive and triable issues of law. It is its averment that while the delay is regretted, it is justifiable and not inordinate.
6. The applicant has filed submissions dated 12<sup>th</sup> August 2024, reiterating its arguments in the application and affidavit in support.
7. The respondent, Esther Wanjiku Kihura, opposes the application and has filed an affidavit she swore on 30<sup>th</sup> July 2024. The respondent avers that the applicant has not given sufficient reasons to explain the delay in filing the notice of appeal and appeal within the stipulated time; that there is no Board Resolution on record to demonstrate that indeed the applicant's Board of Directors met after the lapse of the timelines set and resolved to appeal against the impugned judgment; and that filing a notice of appeal within the timelines is a legal issue which could have been handled by the applicant's legal officer who has sworn the affidavit in support of the application.
8. The respondent notes that the letter dated 28<sup>th</sup> May 2024, instructing its advocates to file an appeal, was written 25 days after delivery of the judgment and 11 days after the lapse of the time set for filing the notice of appeal; and that the particulars of the difficulties experienced in convening the Board meeting have been withheld.
9. The respondent further avers that the applicant does not have an arguable appeal; that only liability on the impugned judgment would apply in the other suits and courts are not tied to the quantum awarded in the impugned judgment; that the draft memorandum of appeal does not raise a single arguable ground of appeal; and that this application is a waste of judicial time and should be dismissed. There were no submissions by the respondent on record.
10. Rule 4 of this *Court's Rules* grants the Court discretion to extend the time required for the doing of any act prescribed under the Rules. The principles applicable in the exercise of this discretion are well settled. The Court has to consider the length of the delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, and, lastly, the degree of prejudice to the respondent if the application is granted-see *Fakir Mohammed v. Joseph Mugambi & 2 others* [2005] eKLR (Civil Application No. Nai. 332 of 2004 (Nyr. 32/04) and *Mwangi v Kenya Airways Ltd* (2003) KLR 486.
11. I have considered, the application, the affidavit in support and opposition thereto, and the applicant's submissions. The applicant has admitted that there was a delay in filing the notice of appeal which, under rule 77 of this *Court's Rules*, should have been filed 14 days after the judgment. This application was filed on 13<sup>th</sup> June 2024, 27 days after the expiry of the prescribed timeline for filing the notice of appeal. This, in my view, is not a delay that can be termed inordinate.
12. Further, the applicant has explained the circumstances that led to the delay- the fact that, as a corporate body with diverse shareholding and directorships, it took time to convene its Board to consider the judgment and issue instructions with regard to the appeal. I find this to be a reasonable explanation



given the nature of the matter, and the fact that the impugned judgment was on a test case in a series of seven arising from the same or similar facts.

13. The applicant has averred that it seeks to raise the issue of constructive termination of employment in relation to whether or not the circumstances leading to the respondent's unpaid leave were reasonable, and whether they led to the respondent terminating her employment with the applicant. It is not for this Court, sitting as a single judge, to determine whether the applicant's appeal is likely to succeed. Finally, having considered the matters before me, I am not satisfied that the grant of the orders sought herein would occasion prejudice to the respondent.
14. I accordingly find that the application dated 13th June 2024 is merited, and it is hereby allowed. The applicant shall file and serve its notice of appeal within 14 days hereof, and thereafter its record of appeal within 60 days of filing of the notice of appeal. There shall be no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH, 2025**

**MUMBI NGUGI**

**JUDGE OF APPEAL**

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

*signed*

**DEPUTY REGISTRAR**

