



**Chande v Kenya Ports Authority (Civil Application
E105 of 2024) [2025] KECA 753 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 753 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E105 OF 2024**

F TUIYOTT, JA

MAY 9, 2025

BETWEEN

SAIDI ABDALLA CHANDE APPLICANT

AND

KENYA PORTS AUTHORITY RESPONDENT

(Being an application for extension of time to file an Appeal out of time from the judgment of Employment and Labour Relations Court at Mombasa (Monica Mbaru, J.) dated 25th January, 2024 in MOMBASA ELRC CAUSE NO. E087 OF 2023)

RULING

1. The application dated 18th September, 2024 seeks an order for extension of time within which to file and serve a memorandum of appeal and record of appeal against the decision of Monica Mbaru, J. delivered on 25th January, 2024 in Mombasa ELRC Cause No. E087 of 2023 and that the memorandum of appeal and record of appeal already filed in Civil Appeal No. E150 of 2024 be deemed as properly filed.
2. In support of the application is an affidavit sworn by the applicant on even date where she deposes that once the judgment was delivered on 25th January, 2024, she instructed her advocates to lodge a notice of appeal which was filed on 9th February, 2024. Thereafter she pursued copies of the judgment and proceedings from the ELRC Mombasa registry and even though the same were ready on 29th April, 2024, her advocates were unable to access them for one reason or another given by the registry staff. She contends that as soon as she was issued with the said certified copies on 29th June 2024, she instructed her counsel to prepare a record of appeal which was promptly filed on 24th July, 2024. She pleads that the lateness in filing the appeal was not her fault.
3. The respondent opposed the application through a replying affidavit of Stephen Kyandih, the Principal Legal Officer Litigation & Disputes of the respondent, sworn on 28th October, 2024. He



asserts that although a record of appeal dated 19th July 2024 was served on 30th September, 2024, there is no valid notice of appeal on record as, by dint of rule 85 of the Rules of this Court, a notice of appeal is deemed to have been withdrawn on account of the failure to institute an appeal within the appointed time of sixty (60) days from the date of decision. In addition, that the letter bespeaking certified typed proceedings, judgment and decree was never copied and served on their advocates as contemplated by rule 84(2). He argues that no justifiable explanation has been given as to the omission to file the record of appeal within the stipulated time and that a further delay of twenty-five (25) days effective 29th June 2024 when the certified proceedings are said to have been supplied, is unexplained and unreasonable in the circumstances.

4. The applicant filed a further affidavit sworn on 13th November, 2024 seeking to clarify on the validity of the notice of appeal, contending that it was filed and uploaded on the court e-filing system on 7th February, 2024 at 12.17 pm and hence filed within the stipulated time.
5. The applicant filed submissions in support of the arguments raised in the application which I will not reproduce as they are substantially a regurgitation of the position she took in her affidavits.
6. The unfettered discretion granted to this Court by rule 4 of the *Court of Appeal Rules*, when considering an application for extension of time must be exercised judiciously and in applying that discretion the Court is guided by the well settled principles as were set out in *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] eKLR) where this Court stated inter alia:-

“The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factors...”

7. The provisions of this Court under rule 77 are clear that a notice of appeal ought to be lodged within fourteen days of the date of the decision against which it is desired to appeal. The notice of appeal herein dated 6th February, 2024 was lodged at the ELRC Registry in Mombasa on 9th February, 2024 and served upon the respondent on 12th February, 2024, and therefore filed and served on time.
8. As for the record of appeal, it was filed on 24th July, 2024. Rule 84 makes provision for institution of appeals and reads: -

- “ 1. Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged-
 - a. a memorandum of appeal, in quadruplicate;
 - b. the record of appeal, in quadruplicate;
 - c. the prescribed fee; and
 - d. security for the costs of the appeal.

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such times may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.



2. An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless his application for such copy was in writing and a copy of it was served upon the respondent.
 3. The period limited by sub-rule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.”
9. On record is a letter dated 4th March, 2024 bespeaking certified copies of the proceedings and judgment. The said letter was not copied to the respondent, and I therefore believe the respondent’s assertion that they were not served with a copy of that letter. A certificate of delay was issued by the registry on 22nd August 2024, excluding the period between 4th March, 2024 and 29th April, 2024. However since the letter bespeaking certified proceedings and judgment was never served upon the respondent, the applicant cannot benefit from exclusion of that period courtesy of the proviso to rule 84(1). In the circumstances, the appeal ought to have been filed within sixty (60) days of 9th February, 2024, that is by or about 11th April 2024. Even so, the proceedings were certified ready on 29th April, 2024 and it took the applicant nearly three (3) months to finally file the appeal.
10. The reason given by the applicant for the delay is simply that the clerk of her counsel was never able to retrieve the copies even after the registry had certified them as ready and it took them until 29th June, 2024 to finally obtain them. The delay in instituting the appeal would have been just a few days had the letter bespeaking the certified proceedings been served upon the respondent’s counsel. That oversight makes the situation look much the worse. Yet, even if this oversight is inexcusable, the appeal was filed just about 60 days after the deadline of 11th April, 2024. Given the overall circumstances here, the Court finds that the delay is not inordinate and has been explained. In exercising my discretion in favour of the applicant, I observe that it has not demonstrated, not least alleged, that the respondent will suffer prejudice should extension be granted.
11. The application dated 18th September, 2024 is therefore allowed in terms of prayer number 2. Costs shall be in the appeal.

DATED AND DELIVERED AT MOMBASA THIS 9TH DAY OF MAY, 2025.

F. TUIYOTT

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JUDGE OF APPEAL

I certify that this is the true copy of the original

Signed

DEPUTY REGISTRAR

