



REPUBLIC OF KENYA



Amalgamated Union of Kenya Metal Workers v Mohammed t/a Rizwan Metal Craft (Civil Appeal (Application) E020 of 2024) [2025] KECA 1394 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KECA 1394 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E020 OF 2024
AK MURGOR, JA
JULY 31, 2025**

BETWEEN

AMALGAMATED UNION OF KENYA METAL WORKERS APPLICANT

AND

**RAIZULL HAQ ALI MOHAMMED T/A RIZWAN METAL
CRAFT RESPONDENT**

(Being an application to certify urgent, the appeal against the judgment of the Employment and Labour Relations Court at Mombasa (Mbaru, J.) delivered on 21st September 2023 in ELRC Cause No. E095 of 2021)

RULING

1. By Notice of Motion dated 16th February 2024 brought pursuant to Rules 47, of the [Court of Appeal Rules](#), the Applicant seeks for orders that: (i) this Court certify the Applicant’s motion as urgent and be heard ex parte in the first instance; ii) that this Court hear and determine the motion on merit; and iii) this Court hear and determine the main appeal on merit.
2. The application that is premised on the affidavit in support of Rose Omamo the Applicant’s General Secretary was brought on the grounds that on 21st September 2023 the Employment and Labour Relations Court delivered a Judgement over an economic dispute concerning gratuity payment for the collective bargaining agreement whose outcome did not satisfy the Applicant; that the Applicant and the Respondent have a valid recognition agreement and thereafter embarked on negotiating 24 items in the collective bargaining agreement; that the parties have since deadlock on one item, that being, payment of service gratuity; that the decision of the Employment and Labour Relations Court rendered the collective bargaining agreement inconclusive, unfair and inequitable therefore violating universal norms; that the collective bargaining agreements are limited to 2 year terms and the current term is due to expire, and that unless this Court certifies both the application and the appeal as urgent to be heard on merit the Applicant’s members risk suffering irreparable loss.



13. The Applicant filed written submissions which reiterated the grounds of the application. When the application came up for hearing on a virtual platform, learned counsel Mr. Simiyu for the Applicant submitted that the application was with respect to the urgent hearing and determination of Civil Appeal No. E033 of 2024. It was submitted that the original appeal was filed as an urgent reference in the lower court. Upon determination of the reference, the Applicant was dissatisfied with the decision and filed an appeal to this Court; that the application is seeking for the appeal to be heard and determined on an urgent basis for the reason that the term for which the collective bargaining agreement relates is due to expire. Relying on Sections 3A and 3B of the [Appellate Jurisdiction Act](#), which requires Appeals to be heard timeously and expeditiously, counsel prayed that the appeal be heard as a matter of priority.
4. For his part, Ms. Nyamacha, learned counsel for the Respondent, submitted that the period for which the current collective bargaining agreement related had already expired and that, therefore, the urgency with respect to hearing of the appeal had already been overtaken. Counsel did not however object to the hearing of the substantive appeal on a priority basis.
5. In response, Mr. Simiyu confirmed that indeed the period in respect of which the collective bargaining agreement related had indeed expired. It was counsel's submission that, notwithstanding the lapse of the period, the position in which the Applicant now finds itself was that until the issues in contestation were determined, no agreements could be entered into between the parties, which is to the detriment of union members.
6. I have carefully considered the motion, the affidavit in support, and submissions by learned counsel. As to whether the appeal should be fixed for hearing on a priority basis is a discretionary power. And as is required in such matters, judicial discretionary power, requires to be exercised, not arbitrarily, whimsically or capriciously, but rather on the basis of evidence and reason.
7. In the case of *Jared Okello vs Charles Otieno Opiyo & 3 Others*, CA No. 151 of 2017, when faced with an application to certify a matter as urgent, this Court expressed:

"Certifying a matter urgent means that the same is to be set down for hearing and determination immediately. It gets priority over other matters, even though they were filed earlier in time and the parties have been waiting patiently for their turn. Before a matter can be allowed to jump the queue, it must be shown to deserve priority hearing. That approach is deliberate and dictated by the principles and values of fairness to all litigants and case management considerations, to the end that deserving applications filed first in time, are not relegated to the periphery while later applications of equal or less urgency get fast-tracked and given preferential treatment."
8. The Applicant in this case is seeking to have the Appeal pending before this Court heard and determined on a priority basis. The reason given for this is that the Collective bargaining agreement between the parties is due to lapse. When counsel appeared before me, both Mr. Simiyu and Ms. Nyamacha confirmed that the period to which the current agreement related had since lapsed. In point of fact, the Applicant submissions state that:

"Collective bargaining agreements are limited to two- year term. The current term being overdue; this honourable court is urged to hear the related appeal on a priority basis to avoid delay of its implementation".



- 9. What stands out is that the 2-year term of the agreement, which is the reason on which this application is premised, has already lapsed. This would mean that the urgency to hear the appeal has since been overtaken.
- 10. Given the circumstances, I am not persuaded that the appeal is urgent so as to take priority over other appeals that were filed earlier in time and for which the concerned parties patiently await their turn to be heard by this Court. That said, the Court is currently hearing 2023 appeals, and this being a 2024 appeal, there is every likelihood that it will be heard in the not-too- distant future.
- 11. Accordingly, I decline to exercise my discretion to order that the appeal be heard on a priority basis. This application fails and is hereby dismissed. I make no orders as to costs.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 31ST DAY OF JULY, 2025

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

