



**University Academic Staff Union (UASU) v Ministry of Education & 5 others (Civil Application E545 of 2023) [2024] KECA 1905 (KLR) (28 March 2024) (Ruling)**

Neutral citation: [2024] KECA 1905 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E545 OF 2023  
K M'INOTI, F TUIYOTT & FA OCHIENG, JJA  
MARCH 28, 2024**

**BETWEEN**

**UNIVERSITY ACADEMIC STAFF UNION (UASU) ..... APPLICANT**

**AND**

**MINISTRY OF EDUCATION ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**MINISTRY OF LABOUR ..... 3<sup>RD</sup> RESPONDENT**

**SALARIES AND REMUNERATION COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**INTER PUBLIC UNIVERSITIES, COUNCILS CONSULTATIVE FORUM OF  
THE FEDERATION OF KENYAN EMPLOYERS ..... 5<sup>TH</sup> RESPONDENT**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATION, INSTITUTIONS  
AND HOSPITAL WORKERS ..... 6<sup>TH</sup> RESPONDENT**

*(Being an application to withdraw the Notice of Appeal brought against the Judgment of the Employment and Labour Relations Court (M. Onyango, J) delivered on 15th January 2021 in ELRC CBA No. 1, 2 and 3 of 2020)*

**RULING**

1. By dint of Rule 85(1) of the Court of Appeal Rules, 2022, a party who lodges a notice of appeal but fails to institute the appeal within the appointed time shall be deemed to have withdrawn the notice of appeal. The Court may, on its own motion or on application by any other party, make such an order.
2. We are moved by University Academic Staff Union (UASU) through a notice of motion dated 16<sup>th</sup> October 2023 to make such order in respect to the notice of appeal filed by the 1<sup>st</sup> to 4<sup>th</sup> respondents against the judgment of the employment and Labour Relations Court (Maureen Onyango, J.) in CBA



No. 1 of 2020, CBA No. 2 of 2020 and CBA No. 3 of 2020. A second prayer is that the stay orders issued against that judgment in Nairobi Court of Appeal Civil Application No. E418 of 2021, Ministry of Education and 4 Others vs Kenya Union of Domestic, Hotels, Education, Institutions and Hospital Workers, be set aside and or vacated.

3. In support of the motion, it is stated that the notice of appeal was filed on 15<sup>th</sup> January 2022 and no appeal has been filed and served on the applicant to date.
4. Kenya Union of Domestic, Hotels, Education, Institutions and Hospital Workers, the 6<sup>th</sup> respondent, supports the motion.
5. The delay in filing the appeal is conceded by the Attorney General, the 3<sup>rd</sup> respondent, who through an affidavit by learned State Counsel Christine Oyugi sworn on 30<sup>th</sup> September 2024, pleads:

“That we undertake to file the record of appeal within the next 14 days to enable the court determine the issues that are pending for appeal.”

6. We have considered the written submissions by the applicant as highlighted by learned counsel Miss Nyakundi who represented it at plenary hearing, those of the Attorney General highlighted by Mr. Eredi State Counsel, the oral submissions by learned counsel Mr. Wahome appearing for the 4<sup>th</sup> respondent and those of Mr. Jaoko learned counsel for the 6<sup>th</sup> respondent.
7. The motion before us is unanswerable. The Attorney General has breached the time prescribed by Rule 84 for instituting an appeal. This was readily conceded. Ms. Christine Oyugi blames the delay in re-allocation of the file on or about April 2023 from Ms. Amelia Chesya to herself and that non-filing of the appeal had not been captured in the hand-over notes.
8. While those may be good reasons for seeking extension of time for filing of the appeal out of time, no such application (which in any event is for a single judge) is before us.
9. We find the notice of motion dated October 16, 2023 has merit and do hereby deem the notice of appeal filed by the 1<sup>st</sup> to 4<sup>th</sup> respondents on January 15, 2021 against the decision of the ELRC to be withdrawn. Regarding the discharge or setting aside of the stay orders issued in E418 of 2021, the stay was to last until the appeal is heard and determined. For that reason, the stay lapses automatically. Costs of the motion shall be borne by the 1<sup>st</sup> to 4<sup>th</sup> respondents.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH, 2025.**

**K. M'INOTI**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

**F. OCHIENG**

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**JUDGE OF APPEAL**

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



Signed

**DEPUTY REGISTRAR.**

