



**Independent Electoral & Boundaries Commission v Kioko (Civil Application E518 of 2023) [2024] KECA 895 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 895 (KLR)

**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL AT NAIROBI**  
**CIVIL APPLICATION E518 OF 2023**  
**S OLE KANTAI, JA**  
**JULY 26, 2024**

**BETWEEN**

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION ... APPLICANT**

**AND**

**COSMUS KIOKO ..... RESPONDENT**

*(An application for extension of time for giving Notice of Appeal and for leave to appeal out of time from the Judgment and Decree of the Employment and Labour Relations Court (Gakeri, J.) dated 4th October 2023 in ELRC Petition No. E014 of 2023)*

**RULING**

1. The applicant Independent Electoral & Boundaries Commission ('IEBC') has brought a Motion under sections 3, 3A and 3B of the Appellate Jurisdiction Act, Rules 2, 4, 41, 43 and 47 of the Court of Appeal Rules, 2022 asking in the main that the Court be pleased:  
  
    "...to grant Leave to file the Appeal as well as the Application to Stay Execution of Judgment and Decree out of time against Nairobi Employment and Labour Relations Court Petition No. E014 of 2023. ..."  
  
    Amongst other prayers.
2. I will only deal with that part of the Motion that relates to leave to extend time because rule 4 of our rules donates power to me a single Judge to deal with it.
3. It is stated in grounds in support of the Motion and in a supporting affidavit of Chrispine Owiye, Director of Legal Services of the Applicant, that judgment was delivered on 4<sup>th</sup> October 2023 by the Employment and Labour Relations Court (ELRC) in the presence of counsel then on record for the applicant; that the said lawyer did not communicate the outcome of the judgment to the applicant and



the applicant only learnt of that outcome on 24<sup>th</sup> October, 2023 when it was served with decree and by then time for filing Notice of Appeal had expired, that:

“...due to the absence of the Commissioners, the normal functioning of the Commission is greatly affected, thus, timely issuance of instructions to counsel currently on record was equally affected since virtually all issues including those that are the mandate of Commissioners land on the Chief Executive Officer’s desk.”

4. That the applicant wishes to appeal and delay in filing Notice of Appeal is due to an omission on the part of counsel which should not prejudice the applicant’s right of appeal. The applicant says in addition, that there are substantial issues that need to be heard and determined on appeal.
5. I have seen the fairly lengthy judgment of Gakeri, J. delivered on 4<sup>th</sup> October, 2023 where the respondent’s termination from employment was declared to have been unfair and the applicant was ordered to reinstate the respondent to employment within 30 days. I have also seen “Intended Memorandum of Appeal” which is attached to the Motion where 5 grounds of appeal are set out.
6. There is a replying affidavit by the respondent Cosmus Kioko, where he says, amongst other things that counsel for the applicant was present in Court during delivery of judgment and even requested copies of the same; he says that the applicant must have been notified of delivery of judgment because it filed and served a Notice of Appeal on 13<sup>th</sup> October, 2023 within time; that the application is therefore premature and there is no requirement for leave; that the intended appeal is frivolous, not arguable and has no chance of success. The respondent says that he has since been reinstated to employment through a letter dated 1<sup>st</sup> November, 2023 on 7<sup>th</sup> November, 2023 and has since been performing his duties as appertains his position as a System Administrator; that the applicant has not been denied a chance to be heard on appeal. Attached to the respondent’s replying affidavit is a Notice of Appeal by IEBC drawn by its lawyers Garane & Somane Advocates dated 13<sup>th</sup> October, 2023. It is not lodged with the Registrar of IEBC as there is no endorsement on the lodging part or a date. There is also a letter by IEBC dated 1<sup>st</sup> November, 2023 to the respondent to the effect that following the said judgment of ELRC of 4<sup>th</sup> October, 2023 the respondent is reinstated to employment.
7. There is apparent confusion on the part of IEBC in the way it has handled the matter. This is evident even from written submissions filed where it acknowledges that it was not aware that its lawyers on record had filed a Notice of Appeal and only became aware when it was served and perused replying affidavit by the respondent. It then became aware that such notice had been filed but I am not told whether the same was lodged with the Registrar according to the rules. It is the respondent who is telling me that a Notice of Appeal was filed on time and that there is no need for the applicant to be granted leave in the circumstances. I note that the respondent acknowledges that the applicant has a right of appeal.
8. In those circumstances there was no delay in filing Notice of Appeal. There is a Notice of Appeal dated 13<sup>th</sup> October, 2023 to appeal a judgment delivered on 6<sup>th</sup> October, 2023. As I have said I have no information whether the same was lodged with the Registrar in accordance with the rules. To that extent only does the Motion dated 7<sup>th</sup> November, 2023 succeed. I allow the applicant to lodge Notice of Appeal (If this was not done) within 7 days of today. I award costs of the Motion to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY, 2024.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**

