



Eastern Produce (K) Limited v Kenya Plantation & Agricultural Workers Union (Civil Appeal (Application) E010 of 2018) [2024] KECA 1551 (KLR) (4 November 2024) (Ruling)

Neutral citation: [2024] KECA 1551 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E010 OF 2018**

**JM MATIVO, JA
NOVEMBER 4, 2024
[IN CHAMBERS]**

BETWEEN

EASTERN PRODUCE (K) LIMITED APPLICANT

AND

**KENYA PLANTATION & AGRICULTURAL WORKERS
UNION RESPONDENT**

(An application for extension of time to file a record of appeal out of time in an intended Appeal from the Judgment of the Employment & Labour Relations Court of Kenya at Kericho (D.K Marete, J.) dated 31st January, 2017 in ELRC No. 14 of 2016)

RULING

1. Vide an application dated 21st February, 2018 brought under Rule 4, of the [Court of Appeal Rules 2010](#), the applicant prays for extension of time within which to file and serve a record of appeal against the Judgment issued 31st January, 2017 in Kericho ELRC No. 14 of 2016.
2. The application is premised on the grounds listed on the face of the application and the applicant's supporting affidavit sworn on 21st February, 2018. The grounds in support of the application are that: -
 - (a) the notice of appeal dated 14th February, 2017 was timely filed;
 - (b) a certificate of delay was issued on 10th November, 2017. However, the appellant's advocate lost his brother David Kibichiy Ngala resulting in the unfortunate shut down of the advocate's office for 30 days;
 - (c) the record of appeal was not filed within the stipulated computation of time due to his brother's demise;



- (d) the appeal has overwhelming chances of success.
3. On 31st October, 2024 at 8.34 AM the Deputy Registrar of this Court sent out an amended hearing notice via e-mail informing counsel/the parties herein that the instant application would be heard by way of written submissions and there shall be no appearance of counsel in court or via video link. In that regard, the applicant and the respondent were reminded to comply with the Court's directions relating to service and filing of submissions before the hearing date.
 4. Today, 4th November, 2024 at 9.00 AM when the application came up for hearing before me, and as at the time of writing this ruling, none of the parties had complied with the Court's directions in the hearing notice. The directions were communicated to the parties respective e-mails: [particularswithheld]@gmail.com; [particularswithheld]@africaonline.co.ke; [particularswithheld]@eacadvcts.com.
 5. Rule 58 (1) of the *Court of Appeal Rules*, 2022 stipulates as follows:

“If, on any day fixed for the hearing of an application, the applicant does not appear or comply with directions, the application may be dismissed, unless the Court sees fit to adjourn the hearing:

Provided that the Court may order that an application may be heard by way of written submissions and where parties have filed written submissions, the court shall consider the submissions.”
 6. Pursuant to the above rule, and being duly satisfied that the parties were duly served as herein above stated, and despite being served, they have failed to comply with the Court's directions, I hereby dismiss the instant application in accordance with Rule 58 (1) of this *Court's Rules* for non-compliance with the directions of the Court issued on 31st October, 2024.

DATED AND DELIVERED AT NAKURU THIS 4TH DAY OF NOVEMBER, 2024.

J. MATIVO

JUDGE OF APPEAL

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

signed.

DEPUTY REGISTRAR.

