



Umesh v Mediheal Hospital & Fertility Centre Ltd t/a Mediheal Hospital & Fertility Centre & another (Civil Application E118 of 2021) [2021] KECA 264 (KLR) (3 December 2021) (Ruling)

Neutral citation: [2021] KECA 264 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E118 OF 2021
PO KIAGE, K M'INOTI & M NGUGI, JJA
DECEMBER 3, 2021**

BETWEEN

NICHAT UMESH APPLICANT

AND

**MEDIHEAL HOSPITAL & FERTILITY CENTRE LTD T/A MEDIHEAL
HOSPITAL & FERTILITY CENTRE 1ST RESPONDENT**

**MEDIHEAL GROUP T/A MEDIHEAL GROUP OF HOSPITALS 2ND
RESPONDENT**

(An application for stay of execution of the decree and orders arising from the ruling of the Employment and Labour Relations Court at Eldoret (Abuodha, J.) dated 24th June 2021, and for extension of time to file Notice of Appeal in relation to the said ruling in ELRC CAUSE NO. E022 OF 2021)

RULING

1. By a Notice of Motion dated 1st August, 2021, Nichat Umesh, the applicant seeks for; an interim stay of execution of the orders issued by the Employment and Labour Relations Court; leave to file a notice of appeal out of time against that ruling; the notice of appeal (lodged at the Employment and Labour Relations Court at Eldoret on 29th July, 2021 be deemed duly filed and proper on record; and costs of the application to be provided for.
2. The application as brought is however problematic. On the face of it, the application seeks seven (7) orders from the Court, orders which upon reading reveal their repetitive nature in substance, evincing the applicant's inattention to detail. For instance, both prayer 3 and 5 are seeking leave to file a notice of appeal out of time. Similarly, prayer 4 and 6 both seek that the notice of appeal lodged at the Employment and Land Relations Court be deemed to be duly filed and properly on record.



3. Further, the application ostensibly prays for an order of stay of execution under Rule 5(2)(b), although the rule is not cited in the title of the application as required, an application which is heard by a full bench. The application also implores this Court to extend time for filing an appeal under Rule 4, an application that ought to be heard by a single Judge. The two prayers should not be lumped together as they cannot be heard in one application. They are separate and distinct and the procedures for their adjudication are also distinct. We reiterate the holding of M’Inoti, JA in Riccardo Fanelli & 2 Others -vs- Frigrieri Graziano [2015] eKLR;

“For the record applications for extension of time under Rule 4 of the Court of Appeal Rules are, by virtual (sic) of the provisions of rule 53(1) to be heard and determined in the first instance by a single judge. Such an application comes to the full court under rule 55 only by way of reference from the decision of the single judge. On the other hand, an application for stay of execution, injunction or stay of proceedings under rule 5(2)(b) must be made to the full court. These are two separate and distinct applications that should be filed and prosecuted as such.”

4. Moreover, for a prayer under Rule 5(2)(b) to be heard, there has to be a notice of appeal in place. We note that the applicant is seeking for leave to file a notice of appeal out of time against the ruling of the learned judge, and that the notice of appeal lodged on 29th July, 2021 in the court below indubitably out of time, be deemed to be duly filed and proper on record. First, we are troubled that the applicant seems to be inviting us to allow him to lodge two (2) notices of appeal, but more significantly is that there is a clear admission that at this stage there is no appeal before this Court since the notice of appeal filed at the Employment and Labour Relations Court stands incompetent unless validated by an order of extension of time at the discretion of a single Judge of this Court. As a matter of logical sequencing therefore, the application for extension of time ought to be dispensed with first before the Court can be clothed with the requisite jurisdiction to consider an application for stay of execution.

5. In the result, we find that this application is incompetent as it is omnibus in nature and premature. We accordingly strike it out with costs.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF DECEMBER, 2021.

P. O. KIAGE

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JUDGE OF APPEAL

K. M’INOTI

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JUDGE OF APPEAL

MUMBI NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

