



Wakaba v Deputy County Commissioner Kajaido North Sub-County & 3 others (Employment and Labour Relations Appeal E050 of 2022) [2025] KEELRC 136 (KLR) (24 January 2025) (Ruling)

Neutral citation: [2025] KEELRC 136 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E050 OF 2022**

**NJ ABUODHA, J
JANUARY 24, 2025**

BETWEEN

ERICK KINUTHIA WAKABA APPELLANT

AND

DEPUTY COUNTY COMMISSIONER KAJAIDO NORTH SUB-COUNTY 1ST RESPONDENT

SECRETARY/CEO PUBLIC SERVICE COMMISSION 2ND RESPONDENT

CABINET SECRETARY MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The Respondents filed a preliminary objection dated 3rd June, 2024 based on the following grounds: -
 - a. That the record of Appeal and Memorandum of Appeal as filed are defective and offend mandatory terms in *Employment and Labour Relations Court Act* Rules 8(2) which states inter alia that, “an appeal shall be filed within thirty days from the date the decision was delivered” having been filed 2 years after the decision of the Honourable Magistrate’s court without leave of court.
 - b. That the Appellant failed to file a Notice of Appeal within the prescribed period as well as Memorandum of Appeal as required by the Civil Procedure Rules, 2020.
 - c. That judgment in this matter was delivered on 27th January,2022 by Hon. D.M Kivuti as per the Judgment and Decree attached to the Record of Appeal yet the Record of Appeal is dated 12th May,2024 that is two years post Judgment without leave of this Honourable Court.



- d. That this Appeal is defective, incompetent, afterthought and an abuse of the court process and ought to be struck out with costs to the Respondents.
 - e. That the Honourable court therefore lacks jurisdiction to hear and determine the suit herein in line with the legal provision stated herein.
2. In response the Appellant filed its Replying Affidavit sworn on 7th June,2024 sworn by Leonard Amunze Anyonje the Appellant's advocate on record who averred that it was not true that judgment was delivered on 27th January,2022 and that the Appeal was filed 2 years post judgment.
 3. Counsel averred that on 7.12.2021 the Respondents closed their case and the court fixed the matter for mention on 27.1.2022 to confirm filing of written submissions and taking a judgment date. That on 27.1.2022 the court confirmed filing of submissions and slated the matter for delivery of judgment on 15.3.2022. That on 15.3.2022 judgment was not ready and parties were asked to attend court on 18.3.2022 when judgment was delivered.
 4. Counsel averred that the Memorandum of Appeal was filed on 12th April,2022 and an appeal is filed once Memorandum of Appeal is filed and not when the Record of Appeal is filed. That after filing the memorandum of appeal they applied through e-filing platform for certified copies of decree, judgment and typed proceedings which despite the numerous visits to the registry the decree was not ready or available up until early 2024 and the proceedings in May,2024
 5. Counsel averred that the proviso of Rule 8(4) of this Court's Rules appreciates proceedings to be filed as soon as possible and within a reasonable time. That the appeal was filed on 12.4.2022 within the 30 days timelines stipulated under Rule 8(2) of the court's Rules and the Preliminary Objection was made to delay justice and goes against the Principal Objectives of the court as provided under section 3 of the [Employment and Labour Relations Court Act](#).
 6. Counsel averred that the court should dismiss the PO with costs and hear and determine the Appeal on its merit.
 7. The Application was disposed off by written submissions.

Determination

8. Rule 8(2) of the [Employment and Labour Relations Court Act](#) (Procedure) Rules provides as follows: -

Where no period of appeal is specified in the written law under paragraph (1), an appeal shall be filed within thirty days from the date the decision was delivered.
9. Whereas the Respondents alleged that the Judgment was delivered on 27th January,2022 and the same date is indicted in the judgment and decree, the Court Proceedings illustrate that on 27th January,2022 the parties confirmed filing of submissions and judgment was to be delivered on 15th March,2022. Counsel for the Appellant averred that on 15th March,2022 judgment was not ready but was delivered on 18th March,2022. From the CTS evidence attached the Judgment is shown to have been delivered on 15th March,2022.
10. To this court it is clear that the judgment was delivered either on 15th or 18th March,2022 since there were no proceedings to show if the judgment was postponed from 15th to 18th March,2022. Assuming the Judgment was delivered on 15th March,2022 and the Memorandum of Appeal dated 11th April,2022 was filed on 12th April,2022 then this court concludes that the Appeal was filed within the stipulated time of 30 days as per the law.



11. This court also notes that the time for filing of Appeal is based on Memorandum of Appeal and not the Record of Appeal which is dependent on availability of typed proceedings, decree which may take time.
12. In conclusion the Respondents preliminary Objection dated 3rd June,2024 is found unmerited and is hereby dismissed with no orders as to costs.
13. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF JANUARY, 2025.

DELIVERED VIRTUALLY THIS 24TH DAY OF JANUARY, 2025.

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

