



**Mwenda v Climate & Energy Advisory Limited (Employment and Labour Relations Cause 1614 of 2018) [2025] KEELRC 59 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 59 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1614 OF 2018**

**MN NDUMA, J  
JANUARY 23, 2025**

**BETWEEN**

**ANGELINA NDUATA MWENDA ..... CLAIMANT**

**AND**

**CLIMATE & ENERGY ADVOSORY LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant filed application dated 18th April 2024 seeking the following orders: -
  1. Spent
  2. Spent
  3. Spent
  4. That the Honourable Court be pleased to grant leave to extend the time for giving notice of intention to appeal from a judgement of this court delivered at Nairobi on 14<sup>th</sup> March 2024 and to request for typed proceedings.
  5. That the Honourable Court be pleased to issue an order of stay of execution of the judgment and decree of this court delivered at Nairobi on 14<sup>th</sup> March, 2024 pending the hearing and determination of the intended appeal against the said judgement and decree.
  6. That the draft Notice of Appeal by the Respondent/Applicant together with the letter requesting for proceedings attached herewith be deemed as properly filed and served upon payment of the requisite court filing fees.
  7. That costs of this application be provided for.
2. The application is premised on grounds 1 to 11 set out on the face of the application and buttressed in the supporting affidavit of Stephen Mutimba, the Managing Director of the Respondent/Applicant



which may be summarized that the Applicant seeks an extension of time for giving notice of intention to appeal from a judgment of the court delivered on 14<sup>th</sup> March 2024.

3. That the newly appointed firm of advocates have discovered that no notice of intention to appeal was filed by the previous firm of advocates who represented the Respondent/Applicant during the trial.
4. That section 7 of the *Appellate jurisdiction Act* empowers the trial court to extend the time for giving notice of intention to appeal from a judgment of this court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice on making such appeal may have already expired.
5. That the delay in bringing this application is not inordinate. That the decretal sum is substantial and in the sum of Kshs. 1,674,000.00.
6. That the intended appeal raises triable issues of law being the lack of jurisdiction of the court to hear and determine the matter there being no employer/employee relationship between the Claimant and the Respondent.
7. That it is in the interest of justice that leave be granted to the applicant to file and serve notice of appeal.
8. That once execution of the decretal amount takes place, the intended appeal will be rendered nugatory.
9. That the court lacked jurisdiction to award damages in respect of the consulting contract as opposed to a contract of employment as the court had so pronounced itself.

### **Replying Affidavit**

10. The Claimant/Respondent deposes that the application is bad in law, lacks merit and constitutes an abuse of the process of the court.
11. That this application had hitherto been dismissed by the court due to the absence of the applicant's advocates but the same was reinstated by consent of the parties.
12. That in the event this application is granted the court directs the Applicant to deposit the entire decretal sum in a joint interest earning account in the name of the parties' advocates.

### **Determination**

13. In the present matter, the only reason given by the Respondent/Applicant for the court to exercise its discretion to allow the Applicant to file notice of intended appeal out of time is that the previous advocate on record failed to file notice of intended appeal and the Respondent/Applicant only became aware of that fact upon instructing the new advocates to prosecute the intended appeal.
14. The Respondent/Applicant has not provided any evidence that it had instructed the previous advocates on record, in writing or otherwise to file notice of intended appeal.
15. Judgment was delivered on 14/3/2024 in open court in the presence of M/s. Macharia holding brief for Mr. Mungai for the Claimant/Respondent and Mr. Lado for Respondent/Applicant.
16. From the court record, the court granted the Respondent/Applicant 30 days stay of execution upon delivery of judgment on 14/3/2024.
17. There is no evidence that the Respondent/Applicant itself, took any steps to file the intended notice of appeal. Even upon filing of this application, the Respondent/Applicant failed to appear for the hearing of the same on 5/6/2024, despite having knowledge of the date of the hearing necessitating the dismissal of the application but the parties consented to have the same reinstated. It is incumbent



- on the Respondent/Applicant to demonstrate that it has an arguable appeal hence the need to have extension of time granted to file notice of appeal. It is also incumbent on the Applicant to demonstrate that it would suffer substantial loss if leave to file notice of appeal is not granted.
18. From the notice of motion and the supporting affidavit, the applicant has failed to demonstrate that it has an arguable appeal and has also failed to demonstrate that it stands to suffer substantial loss if leave is not granted to file notice of appeal.
  19. The Respondent/Applicant did not attach to the application any draft memorandum of appeal indicating intended grounds of appeal if leave to file same is granted.
  20. In the case of Eunice Wanjiku Kimani versus Samuel Ndungu Thuku and 2 others Civil Application E028 of 2024 (2024) KECA 682 (KLR) (16 June 2024 (Ruling), the Court of Appeal per Kantai J. A. was faced with a similar circumstance requiring the exercise of discretion on whether or not to extend time.
  21. The court while accepting the explanation and granting the extension of time held thus: -  
"7 I note the period from when judgement was delivered (24<sup>th</sup> October 2023) to 17<sup>th</sup> November 2023 when efforts were made by the new lawyers to rescue the situation is a short period so there is no inordinate delay. I accept the explanation by the Applicant why there was delay in lodging a notice of appeal. I have seen draft memorandum of Appeal and I think there are reasonable grounds to be argued on appeal."
  22. The present application presents a completely different scenario in that there is no deposition whatsoever that the Respondent/Applicant had instructed the previous advocates on record to file notice of intended appeal despite the court having on the date of judgment granted the Respondent/Applicant 30 days stay of execution. This application was however filed on 18/4/2024, about one month and four days after the judgment of court was delivered. This in itself does not constitute inordinate delay, but the Respondent/ Applicant, unlike in the Eunice Wanjiku Kamau case (Supra) did not attach to the application for extension of time to file a notice of appeal, a draft memorandum of appeal from which this court can gauge whether or not the intended appeal is arguable.
  23. Accordingly, the application for extension of time to file notice of intended appeal lack merit and is dismissed with costs.

**DATED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2025**

**Mathews Nduma**

**Judge**

Appearance:

Mr. Macharia for Claimant/Respondent

Mr. Mumma for Respondent/Applicant

Mr. Kemboi – Court Assistant

