



**Kibos Sugar & Allied Industries v Amuma (Appeal E011 of 2024)
[2025] KEELRC 80 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 80 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E011 OF 2024
NZIOKI WA MAKAU, J
JANUARY 22, 2025**

BETWEEN

KIBOS SUGAR & ALLIED INDUSTRIES APPELLANT

AND

CATHRINE AKINYI AMUMA RESPONDENT

RULING

1. For consideration before court is a Preliminary Objection dated 22nd October 2024 by the Respondent in which she raises the following preliminary points:
 - a. That the appeal is statute barred pursuant to section 12 of the *Employment and Labour Relations Court Act*, Rule 12(1) and (2), 13(A), 15(1) and (3) and 18 of the *Employment and Labour Relations Rules*, 2016.
 - b. That the Honourable Court does not have jurisdiction to hear and determine the appeal in the circumstance.
 - c. That the appeal was filed out of time without leave of court. Judgment was delivered on 22nd November 2019. The appeal was filed 5 years later on 4th April 2024 and that the appeal be dismissed in court.
2. In line with directions issued on 28th November 2024, parties canvassed the Preliminary Objection by way of written submissions.

Respondent's Submissions

3. The Respondent submits that the Preliminary Objection meets the threshold of raising a pure point of law, provided that all facts pleaded are correct, as established in the celebrated case of *Mukisa Biscuit Co. Ltd v West End Distributors Ltd* [1969] EA 696. She asserts that just as in the *Mukisa Biscuits case*



(*supra*) and the decision in [Tailors & Textile Workers Union v Moi University & Rivatex E. Limited](#) [2014] eKLR, there is no need to ascertain any facts as the facts in this suit speak for themselves. She references the Appellant's blatant disregard of the consent dated 22nd July 2020 which reinstated the judgment of the 22nd November 2019, the fact that this appeal was filed without leave after more than 4 years, and Hon. Justice Radido's ruling of 28th June 2024 which denied the Appellant stay of execution due to inordinate delay of 4 years among other reasons.

4. Additionally, the Respondent submits that an appeal from the magistrate's court must be filed within 30 days of judgment failure to which leave must be sought. She reiterates that this appeal is incompetent having been filed without leave after 4 years. To support this proposition the Respondent relies on Rules 8(1) and (2), 12(1) and (2) and 18 of the [Employment and Labour Relations Court Rules](#) 2016. In emphasizing the importance of seeking leave the Respondent cites the case of [Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] KESC 12 (KLR), and [Kavuu v Badar Hardware Limited](#) Mombasa ELRC Appeal E025 of 2023 where the common thread was that a party was allowed to file an appeal out of time provided, they sought and were granted leave and demonstrated sufficient reasons for the delay.
5. The Respondent further submits that the delay of 4 years is inordinate and reiterates that equity aids the vigilant, not the indolent. She cites the Court of Appeal in [Mohamed Shally Sese \(Shah Sese\) v Fulson Company Ltd & Kilifi Beach Properties Limited](#) [2016] KECA 253 (KLR) where the court found a year's delay to be inordinate in view of its unexplained nature, averring that a litigant must exercise vigilance in the conduct of their case.
6. Moreover, the Respondent relies on the decision of the Court of Appeal in [Benson Nzambu & 3 others v Jedida Onduso Akanda](#) [2021] KECA 630 (KLR) where the Court held that:

“In addition, the applicants have not explained their role in the 2 years' delay. They have not demonstrated what steps they took to mitigate against the inordinate delay. Though they claim to have listed their advocate, the receipts clearly show that after they instructed Kalwa and Co Advocates, they went to sleep for two years, and it was not until 5th March 2020 that they awakened to check on the status of their appeal. Their inaction displays indolence on their part and a lack of interest in their appeal, with the result that in my view, the delay has not been explained to my satisfaction.”

7. In conclusion the Respondent submits that the appeal should be dismissed with costs.
8. As at the time of penning the Ruling, the Appellant had not filed their submissions. The issue for the Court's determination is whether the appeal was filed within time as per the provisions of the [Employment and Labour Relations Court \(Procedure\) Rules](#). Both the 2016 and 2024 iterations of the [Rules](#) provide for 30 days post judgment for an appeal arising from the Magistrates Court. The appeal herein was filed on 4th April 2024. The Judgment against which the appeal is preferred was rendered on 22nd November 2019.
9. In the filing of the appeal in April 2024, no leave was sought and no leave was therefore granted to admit this appeal out of time. Indeed, only an attempt to stay execution was made. In the case of [Mukisa Biscuit Co. Ltd v West End Distributors Ltd](#) (*supra*), the court held as follows:

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of



the court, or a plea of limitation, or a submission that parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

10. Clearly, where the jurisdiction of the court is absent – for whatever reason, a preliminary objection can be taken. In this particular case, the Court’s jurisdiction was not available when the appeal was filed by reason of effluxion of time. It is the finding of the Court that this instant appeal is incompetent and therefore only fit for striking out with costs to the Respondent.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 22ND DAY OF JANUARY 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

