



**Mwanci v Gthinji (Miscellaneous Application E037 of 2024)
[2025] KEELRC 741 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 741 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION E037 OF 2024**

J RIKA, J

FEBRUARY 28, 2025

BETWEEN

FLORA WAITHERA MWANCI APPLICANT

AND

PRISCAH WAITHERA GTHINJI RESPONDENT

RULING

1. The Applicant seeks leave of the Court, through her application dated 29th July 2024, to appeal against the Judgment of the Hon. Chief Magistrate Nakuru, E. Juma, delivered on 11th June 2024.
2. The Applicant was the Claimant in the subject Claim, C.M.E&LC No. E098 of 2022.
3. The application is founded on the affidavit of the Applicant, sworn on 29th July 2024.
4. She explains that upon receiving the parties' final submissions, the Court scheduled delivery of the Judgment for 2nd May 2024.
5. On 2nd May 2024, the Judgment was not ready and was deferred to 14th May 2024.
6. On 14th May 2024, the Judgment was not ready, and was deferred to 23rd July 2024.
7. The Applicant states that without notice to her Advocate, the Court had also rescheduled delivery of the Judgment on three other dates, 30th May 2024, 4th June 2024, and 11th June 2024.
8. She was informed by her Advocate that the Judgment was delivered on 11th June 2024 [not 2014], without notice to her Advocate.
9. She visited her Advocate's chambers on 23rd July 2024 for delivery of the Judgment as had earlier been scheduled. She was informed that the Court was not sitting.



10. Upon further enquiry from the Court, her Advocate was informed that Judgment was delivered on 11th June 2024, dismissing the Claim.
11. She is aggrieved by the Judgment, and wishes to appeal. She has applied for typed proceedings from the Trial Court. She filed this application timeously, within 3 days of learning that Judgment was delivered on 11th June 2024. 30 days allowed under the E&LRC (Procedure) Rules, 2024, on filing of appeals from the Magistrate's Court to the E&LRC, had already lapsed, by the time she learnt that Judgment had already been delivered.
12. She submits that she has a strong appeal, and would be prejudiced, if not allowed to pursue it. Her Advocate's absence from the Court, on the date Judgment was delivered, was not through her Advocate's mistake; it was through lack of proper communication from the Court.
13. The Respondent opposes the application, through her affidavit, sworn on 4th November 2024.
14. She states that delivery of the Judgment was not ready on 14th May 2024. It was rescheduled to 11th June 2024 and 23rd July 2024. The Applicant's Advocate Ms. Nyaga, was present when the date was rescheduled. Ms. Nyaga had no reason not to log in, on 11th June 2024, when Judgment was delivered. She had logged in on previous dates. The Applicant paid for typed proceedings on 28th June 2024, and must therefore have known Judgment was delivered, before 23rd July 2024. The application has no merit, and ought to be dismissed with costs.
15. Parties agreed to have the application considered and determined, on the strength of their affidavits and submissions. They confirmed filing and exchange of submissions, at the last appearance before the Court, on 5th November 2024.

The Court Finds: -

16. The Applicant's letter to the Trial Court, asking for typed proceedings, is dated 25th July 2024, 2 days after the Applicant states, she came to know that Judgment had already been delivered.
17. The Court has not seen a receipt issued on 28th June 2024 to the Applicant, on applying for typed proceedings. The receipt for the amount of Kshs. 1,000, bearing the date 28th June, has the year 2022. It seems to have been a receipt issued upon filing of other documents or pleadings in June 2022, when the Claim was instituted, and not upon applying for typed proceedings in July 2024.
18. The Court does not agree with the Respondent, that the Applicant learnt of delivery of the Judgment, earlier than 23rd July 2024.
19. Both parties agree, that the date for delivery of Judgment had issued severally, and delivery deferred severally.
20. There were multiple dates issued by the Court.
21. When this happens, there is always a probability of either party losing track of the date Judgment is to be delivered. There is always a chance that, there is inadequate communication between the Court and the parties, which may lead to the unintentional absence of either party, at the time Judgment is finally delivered.
22. Courts are increasingly under pressure to deliver as many Judgments as they can, within very limited time and with very limited resources. The pressure is both internal and external. Unrealistic timelines are set, for delivery of a multitude of Judgments.



23. Even for Judges who are assigned Legal Researchers, there is no adequate time given for legal research. Judges are likely to carry their own, limited legal research, rather than delay preparation of Judgments, by having the Court files entrusted to Legal Researchers, for the intended, in-depth legal research. Judgments are rushed, and hundreds of them, must be delivered within very limited time. Legal Researchers are hardly given time to prepare written legal opinions, and supply the Judges with judicial precedents and authorities.
24. Delivering a Judgment on a given date, therefore, becomes a challenge to the concerned Judge or Magistrate. Parties end up attending Courts multiple times, with the same frustrating result: “Judgment is not ready, come back on date x.”
25. Some Courts have espoused the concept of ‘Judgment on notice.’ When parties are notified by the Court that their Judgments and Rulings are ready, confusion such the one at the centre of this application is avoided. There is certainty. It also ensures that Judges and Magistrates, aided by Legal Researchers, are granted adequate time, to deliver on their constitutional mandate. Litigants and their Advocates are saved from making fruitless trips to the Courts, to receive Judgments that are not ready.
26. While Courts are constitutionally under obligation not to delay delivery of their decisions, a balance must be sought, not to rush delivery of those decisions. It is counterproductive to apply pressure on Judges and Magistrates to deliver multiple decisions, within unrealistic timelines. We need to embrace the concept of ‘Judgment on notice.’ Courts must retain the ability to manage their proceedings and outcomes, without needless pressure. The maxim that, “justice delayed, is justice denied,” ought to be carefully weighed against the maxim that, “justice hurried, is justice buried.”
27. Pressure exerted on Judges and Magistrates, internally and externally, to deliver quick decisions, is only likely to result in thin-slice Judgments, or what some jurists refer to a ‘microwave Judgments.’
28. The Court is convinced that the Applicant was not at fault, by failing to attend the Trial Court, when Judgment was delivered on 11th June 2024. The Trial Court appears to have been under pressure to deliver Judgment within strict timelines. It scheduled delivery on multiple dates, in quick succession, because Judgment was not ready, when the Court thought it would be ready. The Applicant and her Advocate most likely lost track of the Judgment date, confronted with a staccato of dates given by the Trial Court. A notice to the parties from the Court, calling upon them to attend Court, once Judgment was ready, would have avoided confusion, and ensured both parties were involved when the Judgment was finally delivered.
29. Rule 18 of the [E&LRC \(Procedure\) Rules, 2024](#), enables the Court to extend time for filing of an Appeal, “if circumstances justify.” Rule 80 affirms Rule 18, stating that, “the Court may, upon application or on its own motion, extend any time prescribed under these Rules, or such time as may be stipulated in an order of the Court.” The circumstances in this matter justify extension. Failure by the Applicant to attend Court, on the date Judgment was finally delivered was not of her own making. Her Claim was dismissed in her absence, and she ought not to be denied the chance to exercise her right of appeal.

It is ordered: -

- a. The application dated 29th July 2024 is allowed.
- b. The Applicant is granted leave to file her Appeal within 30 days of this Ruling.
- c. No order on the costs.



DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28TH DAY OF FEBRUARY 2025.

James Rika

Judge

