



**Sheer Logistics Mngement Consultants v Baha (Employment and Labour Relations Appeal E253 of 2024) [2025] KEELRC 1138 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1138 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E253 OF 2024**

**K OCHARO, J**

**FEBRUARY 28, 2025**

**BETWEEN**

**SHEER LOGISTICS MNGEMENT CONSULTANTS ..... APPELLANT**

**AND**

**RICHARD MASHA BAHA ..... RESPONDENT**

**RULING**

1. On 27<sup>th</sup> November 2024, the Appellant’s application dated 23<sup>rd</sup> November 2024 was placed before this Court for orders under certificate of urgency, and upon reading the application, the grounds upon which it is premised and the affidavit thereof, the Court ordered that; pending the hearing and determination of the application, there be a temporary stay of execution of the decree in Mombasa and CMELRC E 486 OF 2021; the application be inter partes on 20<sup>th</sup> February 2025.
2. When this matter came up for hearing of the application on 20<sup>th</sup> February 2025, Counsel Ms. Mwashushe for the Respondent pointed out that the appeal herein is defective as it was initiated by an application dated 23<sup>rd</sup> November 2024. The memorandum of appeal was filed on 27<sup>th</sup> November 2024, after the application had been filed. She sought that the appeal be struck out.
3. In response, Ms. Kariuki, Counsel for the Appellant, stated the Judgment by the Trial Court was delivered on 28<sup>th</sup> October 2024. On 26<sup>th</sup> November 2024, with instructions to appeal against the Judgment, Counsel filed the above state application and a memorandum of appeal. Inadvertently, the memorandum of Appeal was presented as an annexure to the supporting affidavit instead of as an independent document initiating the appeal herein.
4. She further stated that upon realising the anomaly, the Court Registry wrote her law firm an email on 27<sup>th</sup> November 2024 informing them that the memorandum of appeal had not been presented among the documents that were forwarded online for filing on 26<sup>th</sup> November 2024. Upon confirming that, indeed, it wasn’t, she immediately filed the memorandum of appeal.



5. She contended that even on the 27<sup>th</sup> of November 2024, the filing of the memorandum of appeal was lodged within time.
6. This Court is sized with the question to consider whether the appeal herein was initiated through the application dated 23<sup>rd</sup> November 2024. With great respect, I find immense difficulty in understanding what informs Counsel for the Respondent's line of thought that it was. In the context of civil proceedings, a document can only be said to be a vessel through which an appeal has been instituted if it is expressive of the intention that it was to be so by the party who has filed it and has the reason[s] for assailing the decision sought to be unseated.
7. The Notice of Motion application dated 23<sup>rd</sup> November 2024, looked from whatever angle, cannot be seen as possessing the characteristics stated hereinabove. It was filed for a purpose other than the alleged initiation of an appeal against the judgment of the Lower Court.
8. I hold that the Appeal herein was initiated by a memorandum of appeal dated 23<sup>rd</sup> November 2024, filed on 27<sup>th</sup> November 2024. The fact that the Notice of Motion Application was filed ahead of the memorandum of appeal doesn't invalidate the memorandum, which undeniably was filed within the requisite period. It was for the Registry to decide whether the memorandum of appeal was to be received under a file independent of the one opened on 26<sup>th</sup> November 2024 or under the existing file [that opened on 26<sup>th</sup> ] under which the application was received and allocated file No ELRCA E 253 of 2024. If there was any confusion, misstep or oversight in the manner the Registry dealt with the memorandum of appeal filed on 27<sup>th</sup> November 2024, the confusion, misstep, or oversight cannot be allowed to prejudice the Appellant.
9. Perhaps the valid question is whether the application dated 26 November 2024 was improperly received on an Appeal file when a memorandum of appeal had not been received to form a basis for opening the file.
10. In the upshot, I am not persuaded that the preliminary point raised and the application that the appeal herein be struck out have merit. I hold that the appeal herein was properly initiated through the memorandum of appeal filed on November 27, 2024.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**OCHARO KEBIRA**

**JUDGE**

