



**Kenya National Union of Nurses v Kenyatta National Hospital & another
(Cause E706 of 2021) [2025] KEELRC 506 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 506 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E706 OF 2021
NJ ABUODHA, J
FEBRUARY 24, 2025**

BETWEEN

KENYA NATIONAL UNION OF NURSES CLAIMANT

AND

KENYATTA NATIONAL HOSPITAL 1ST RESPONDENT

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTES,
HOSPITALS AND ALLIED WORKERS 2ND RESPONDENT**

RULING

1. The Claimant herein filed application dated 18th January, 2024 seeking for orders of leave to file Notice of Appeal out of prescribed time and the attached Notice of Appeal to be deemed as duly filed.
2. The application is supported by grounds on the face of the Application herein and the Affidavit of David Omulama the Industrial Relations Officer in conduct of the matter who averred that judgment in the matter was delivered on 28th September, 2023 in open court at Mombasa. That the Claimant was not aware of the date of the judgment as no notice of judgment date was served upon the Claimant hence the Claimant did not attend court.
3. The Claimant averred that they learned of the judgment on 14th November, 2023 when it made enquiry from the registry as to the status of the matter. That by the time the Claimant learnt of the judgment the 30 days within which Notice of Appeal ought to be filed had already lapsed. That Claimant is dissatisfied with the entire judgment and would wish to appeal to the court of appeal which it can only file after Notice of Appeal.
4. The Claimant averred that it will suffer irreparable prejudice if the application is not allowed as it shall be locked out on its right to appeal without any other avenue for redress.



5. In response the 2nd Respondent filed its Replying Affidavit sworn on 11th May,2024 sworn by ALBERT NJERU OBED the Secretary General of the 2nd Respondent union who opposed the application stating that they made an inquiry at the Employment and Labour Relations Court on 6th May,2024 who informed them the judgment notice was given to all parties by way of text messages which are normally sent through the parties' telephone numbers provided in the CTS filing system. That the Application lacked merit and it was an afterthought hence it should be dismissed.
6. The Application was dispensed of by written submissions.

Claimant's Submissions

7. The Claimant filed written submissions dated 21st November,2024 through their Industrial Relations Officer Mr. David Omulama. On the issue of whether the court issued judgment notice for 28/9/2023 the Claimant submitted that at the close of hearing of the main suit by way of submissions the court directed that judgment would be rendered on notice to parties. That no such notice was received by the Claimant.
8. The Claimant submitted that the alleged notice through text messages as stated by the 2nd Respondent in their affidavit was not proved by way of filing a screenshot of such message. That the same amounts to hearsay as it lacks evidence. Further the 2nd Respondent letter of 18th March,2024 requesting for evidence of service/ judgment notice from the deputy registrar of the court has never been responded to as there is no such evidence or notice of judgment as requested filed in court.
9. The Claimant submitted that failure to attend court on the day of the judgment was not deliberate as it was not aware and it learnt of the judgment after 30 days after which period to file the notice of appeal had lapsed. That the Application should be allowed while admitting the notice of appeal as duly filed.

Respondents' Submissions

10. The Respondents did not file their written submissions as at the time of writing this ruling.

Determination

11. The operative provision of Notice of Appeal from the Employment and Labour Relations Court is the Court of Appeal Rules 2022 where Rule 77 provides as follows: _
 - (1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
 - (2) Each notice under subrule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.
12. The above provision clearly shows that a Notice of Appeal is to be filed 14 days after delivery of the Judgment. In this case the Judgment was delivered on 28th September,2023 which means 14 days were ending on 12th October,2023. This court will not analyze the merits or demerits of this application since it is clear the above Rules are Court of Appeal rules where the appeal, if cleared will ultimately be filed and heard. The Application therefore ought to have been made at that court. Even if this court was to allow this application for leave to file notice of appeal out of time the Claimant would still have to seek leave to file the appeal out of time at the Court of Appeal in accordance with the rules of that Court.
13. In conclusion the Claimant's Application dated 18th January, 2024 is found unmerited and is hereby dismissed with costs.



14. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2025

DELIVERED VIRTUALLY THIS 24TH DAY OF FEBRUARY, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

