



**Mandere v Mechai International (Miscellaneous Application  
E006 of 2024) [2025] KEELRC 519 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 519 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
MISCELLANEOUS APPLICATION E006 OF 2024  
MA ONYANGO, J  
FEBRUARY 20, 2025**

**BETWEEN**

**ERIC OIRERE MANDERE ..... APPLICANT**

**AND**

**MECHAI INTERNATIONAL ..... RESPONDENT**

**RULING**

1. By a Notice of Motion application dated 20<sup>th</sup> March, 2024 brought under sections 3A, 79(G) and 95 of the *Civil Procedure Act*, Cap 21, Order 50 Rule 6 of the Civil Procedure Rules, 2010, sections 3 of the Employment and *Labour Relations Act* 2011 (sic) and Article 159(2)(d) of *the Constitution* of Kenya, 2010, the Applicant prays for leave to file appeal out of time against the judgment of Honourable R. Odenyo, SPM, delivered on the 15<sup>th</sup> day of February, 2024 in Eldoret Chief Magistrates ELRC Cause No. 130 of 2019 between Erick Oirere Mandere and Mechai International. He further prays that upon leave being granted the Memorandum of Appeal and grounds of appeal annexed to the application be deemed as duly filed and served.
2. The Applicant further prays that pending hearing and determination of this application inter partes there be stay of execution of the judgment and decree made by the trial court on the 15th of February, 2024 and all subsequent orders. He also prays that costs of and incidental to this application abide the result of the intended appeal.
3. In the grounds and affidavit in support of the application the Applicant states that he was unaware that at the time of delivery of the judgment by the trial court his advocate was indisposed and did not attend court for the delivery of judgment, that the advocate was therefore not able to communicate the outcome of the judgement to the applicant in time to enable him instruct the advocate to file appeal, that by the time he reached the advocate the time for filing appeal had lapsed, that he is dissatisfied with the judgment of the trial court and desires to appeal against the same, that the delay is only 6



- days and is not inordinate, and that there will be no prejudice to the Respondent if the prayers in the application are granted.
4. The Applicant attached a copy of the judgement of the trial court and draft memorandum of appeal to his affidavit.
  5. The Respondent opposed the application through a replying affidavit sworn on 21<sup>st</sup> May, 2024 in which it stated that judgment was delivered on 22<sup>nd</sup> February, 2024 and the 30-day window for appeal had not lapsed by the time the instant application was filed. That the instant application was therefore unnecessary.
  6. The application was disposed of by way of written submissions. Both parties filed submissions which I have considered.
  7. The court notes that the instant application was unnecessary as at the time of filing the same the 30-day window for filing appeal had not lapsed. As pointed out by the Respondent, the judgment was delivered on 22<sup>nd</sup> February, 2024 and the instant application is dated 21<sup>st</sup> March, 2024, a day before the lapse of the 30-day window for filing appeal.
  8. The court understands that the application was filed out of abundance of caution as the Applicant and his counsel were both not in court on the date the judgment was delivered. I have further noted from the copy of judgment filed with the Applicant's application that the copy filed does not bear the date of delivery or the name and signature of the Hon. Magistrate.
  9. The objection raised by the Respondent on the provisions of the law under which the application is filed is a technical error that would not justify the denial of the application. Nevertheless, counsel for the Applicant is reminded that provisions of the law are not made for cosmetic purposes and are intended to be invoked by parties approaching the court to guide both the court and the adversary party on the proper course of action to take on the application. Counsel for the Applicant is reminded that there are rules of this court that are applicable when approaching this court and that the civil Procedure Rules should be applied only where the rules of this court permit or in situations where the rules of this court are silent on the issue.
  10. Going back to the specific issues before the court, Rule 12 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides for the filing of a memorandum of appeal within 30 days or within the time specified in the law under which the appellant approaches the court.
  11. Rule 18 provides for extension of time for filing appeal or any document relating to appeals where the circumstances justify.
  12. Rule 21 provides for filing of applications for stay of execution.
  13. The principles for grant of extension of time have been settled in many decisions. They are:
    - i. Whether the application is brought without unreasonable delay,
    - ii. Whether the appeal has merit,
    - iii. Whether there will be any prejudice suffered by the Respondent, and,
    - iv. Whether there is a reasonable explanation for the failure to file the appeal in time.
  14. On the first ground, as conceded by the Respondent the application was brought even before the lapse of the 30-day window for filing appeals.



15. On the second ground, I have looked at both the judgment of the trial court and the draft memorandum of appeal. I am satisfied that the appeal is not frivolous. I must clarify that an appeal that is not frivolous does not necessarily mean that the appeal must succeed.
16. On the third ground, the judgment having had no negative order against the Respondent, it is unlikely to be prejudiced by the grant of the orders sought.
17. On the final ground whether there is sufficient explanation for the delay, the Applicant stated that neither him nor his counsel were in court on the date of delivery of judgment as his counsel was indisposed. He has further stated that he was unable to reach his counsel to give instructions for the appeal.
18. I am satisfied that these are justifiable reasons for the delay which as I have pointed out above, was not exactly the case because the application was filed before the time for filing appeal had lapsed based on the mistaken belief by both the Applicant and his counsel that the date had lapsed.
19. For the forgoing reasons, it is my view that the application for leave to file appeal out of time is merited.
20. The second prayer is for stay of execution which in this case is stay of orders on costs as the suit was dismissed with costs. It is my view that having granted the first prayer for filing appeal out of time, it is reasonable to grant the second prayer so that should the appeal succeed and costs be ordered against the Respondent, there will be not need to follow the Respondent to refund the costs.
21. For the foregoing reasons, the application dated 20<sup>th</sup> March, 2024 is allowed.
22. Costs will abide the outcome of the appeal.

**DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025**

**MAUREEN ONYANGO**

**JUDGE**

