



**Zayed Children Welfare Centre v Ismael (Miscellaneous Application
E008 of 2025) [2025] KEELRC 983 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 983 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E008 OF 2025**

**M MBARŪ, J
MARCH 27, 2025**

BETWEEN
ZAYED CHILDREN WELFARE CENTRE APPLICANT
AND
SHARIFFA KASSIM ISMAEL RESPONDENT

RULING

1. The applicant filed an application dated 22 January 2025 under the provisions of Section 79G and 3A of the *Civil Procedure Act*, Order 51 Rule 1 and 2 and Order 42 Rule 6 of the *Civil Procedure Rules* and seeking orders that there be a stay of execution of the judgment delivered on 16 November 2023 in Mombasa MCELRC No 435 of 2022 and that the court does enlarge time within which to file an appeal out of time. The application is supported by the affidavit of Abubakar Hassan Dindia, the director, who avers that the trial court delivered judgment on 16 November 2023 and, aggrieved, the applicant wishes to file an appeal.
2. Dindia avers that the applicant filed Appeal No E005 of 2024, which was struck out for lack of leave. The applicant then applied to the trial court for leave to appeal out of time, but the application was dismissed for want of jurisdiction.
3. Appeal No E005 of 2024 was filed on 2 February 2024, while the judgment was delivered on 16 November 2024 with a delay of 23 days. Such a delay was not inordinate. The appeal is based on cogent reasons with high chances of success, and if the application is not allowed, the applicant will suffer loss and damage, and their appeal will be rendered nugatory. If allowed, the applicant will abide by the conditions granted by the court.
4. In reply, the respondent filed Grounds of Opposition and averred that the question of stay of execution was addressed in an appeal dated 17 February 2024 in MCELRC No 435 of 2022. The applicant was granted a stay of execution on condition that the decretal sum of Kshs 556 475 be deposited in a joint



interest-earning account, which conditions the applicant failed to comply with; hence, it has come to court with unclean hands.

5. The order seeking leave to appeal out of time was addressed with finality before the trial court, and hence, it is *res judicata*. The applicant is not justified in raising similar issues before this court, and the application should be dismissed with costs.
6. Both parties attended and made submissions, which were analyzed. The twin issues for determination are whether the court should stay the execution of the trial court judgment and decree and whether the application should be allowed more time to file an appeal.
7. The respondent has challenged the instant application as being *res judicata*. The issue is that the orders sought herein were subject to litigation before the trial court in Mombasa MCELRC No 435 of 2022.
8. The applicant has moved the court under a miscellaneous application seeking a stay of execution and time extension to file an appeal. The applicant has admitted that there was ELRC Appeal No E005 of 2024, which was struck out for being incompetent.
9. The applicant has also admitted that an application seeking leave to appeal out of time was filed under CMELRC No 435 of 2022, which was dismissed for lack of jurisdiction. The instant application is filed before this court and not the trial court. The principles of *res judicata* as defined under the [Civil Procedure Act](#) and the rules thereto do not apply. The court has not addressed a similar application before, and the purpose of the instant application is as stated.
10. The applicant is seeking more time to file an appeal from the judgment delivered on 16 November 2023. What is the reason for the delay in filing the appeal in time? The applicant first filed an incompetent appeal. It further sought more time to file an appeal out of time before the wrong court. Is that a sufficient reason for the delay?
11. Whereas a party should not be locked out of the seat of justice, the respondent should not be punished for the applicant's inaction. Both parties should have their rights secured without undue prejudice.
12. Under Section 79G of the [Civil Procedure Act](#) and Section 3 of the [Employment and Labour Relations Court Act](#), this court is allowed to extend the time to file an appeal on a justified basis in the interests of justice. However, such a right of appeal should not be applied to negate the other party's rights. In this regard, the applicant is granted 14 days to file the appeal; failure to do so shall cause the lapse.
13. In addition to seeking more time, the applicant has applied for a stay of execution of the trial court judgment. The applicant has not contested that the trial court directed a deposit of the decretal sum of Kshs 556, 475 into a joint interest-earning account as the condition for the stay of execution, but there has been no compliance.
14. Why would the applicant fail to abide by the conditions for a stay of execution as granted by the court? Such a lapse does not place the applicant in good standing.
15. For this purpose, the applicant shall deposit the decretal sum of Kshs 556, 475 in court within the next 14 days lapsing on 10 April 2025, failure to which the order of stay for execution shall automatically lapse. Upon the lapse, the court shall remit the
16. Accordingly, the applicant is granted 14 days to file an appeal and serve the respondent. Further, there is a stay of execution of the judgment in Mombasa CMLERC No 435 of 2022 on condition that the applicant shall deposit Kshs 556,475 in court on or before 10 April 2025, due to which the order of stay shall lapse and allow for execution.

The respondent is awarded costs for this application.



DELIVERED IN OPEN COURT AT MOMBASA ON THIS 27 MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and

