



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Wairioko v Mwalimu National Savings and Credit Cooperative Society Limited
(Cause E940 of 2021) [2025] KEELRC 829 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 829 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E940 OF 2021
AK NZEI, J
MARCH 14, 2025**

BETWEEN

RHODA GACHAMBI WAIRIOKO CLAIMANT

AND

**MWALIMU NATIONAL SAVINGS AND CREDIT COOPERATIVE SOCIETY
LIMITED RESPONDENT**

RULING

1. The Court's record shows that on 25th April, 2024, the Court (Maureen Onyango, J) delivered its Judgment, and that vide the said Judgment, the Claimant's suit was dismissed with no order as to costs.
2. On 10th July, 2024, almost two and a half months after delivery of the Court's Judgment, the Claimant filed a Notice of Motion dated 2nd July, 2024 seeking the following substantive Orders:-
 - a. That the Court be pleased to grant leave of extension of time within which to file and serve a Notice of Appeal against the entire Judgment of the Employment and Labour Relations Court issued on 25th April, 2024 in ELRC Cause No. E940 of 2021.
 - b. That the Notice of Appeal dated 30th April, 2024 and letter requesting for proceedings dated 4th May, 2024, both filed and served on 4th June, 2024, be deemed to be duly filed, served and properly on record.
 - c. That costs of the application be provided for.
3. The application is based on grounds that are set out on the face of the application, and on the Claimant/Applicant's supporting affidavit sworn on 2nd July, 2024. It is deponed in the said affidavit:-
 - a. That on 25th April, 2024, the Claimant/Applicant's Advocates received a call from the (trial) Judge's Office in Eldoret informing them that Judgment would be delivered virtually by the Honourable Judge at 11.00 a.m.



- b. That after delivery of the Judgment, the Claimant’s Advocates were informed to wait for the physical file to be brought to Nairobi Registry from Eldoret Registry before they could be availed a copy of the Judgment.
 - c. That the Claimant/Applicant’s Advocates wrote to the Eldoret Registry seeking to be allowed access to a copy of the Court’s Judgment, and that the Claimant/Applicant was only able to access a copy of the Court’s Judgment on 17th May, 2024 after her Advocates checked regularly with the Nairobi Registry; and that failure to access the Court’s Judgment led to late filing and service of a Notice of Appeal and a letter requesting for proceedings.
 - d. That the Claimant/Applicant is desirous of appealing the entire Judgment of this Court.
 - e. That the Claimant has an arguable appeal as demonstrated in the draft memorandum of appeal annexed to the affidavit.
4. The application, which is expressed to be brought under Article 159(2)(d) of *the Constitution* of Kenya 2010 and Section 7 of the *Appellate Jurisdiction Act*, is opposed by the Respondent vide grounds of opposition dated 2nd December, 2024. The Respondent set forth the following grounds of opposition:-
- a. that the application is incompetent, fatally defective, untenable, bad in law and an abuse of the Court’s process.
 - b. that the application offends provisions of Rules 41, 44 and 45 of the Court of Appeal Rules 2022.
 - c. that the Court has no Jurisdiction to entertain the application as drawn, as the Court is functus officio, having rendered its Judgment on 25th April, 2024.
 - d. that no plausible explanation is given herein for failure by the Claimant/Applicant to file a Notice of Appeal within the required timelines.
 - e. that equity aids the vigilant and never the indolent.
 - f. that by virtue of the status of Appeal against determination by this Court, the matter is effectively at the appellate stage, and this Court cannot grant the Orders sought.
 - g. that the application lacks merit and is vexatious, and ought to be dismissed with costs to the Respondent.
5. Having considered the application and the grounds of opposition raised by the Respondent, issues that fall for determination, in my view, are as follows:-
- a. Whether this Court has jurisdiction to entertain the Claimant’s Notice of Motion dated 2nd July, 2024.
 - b. Whether Orders sought in the application are capable of being granted by this Court.
6. The Claimant/Applicant depones as follows at paragraph 10 of her supporting affidavit sworn on 2nd July, 2024:-
- “ 10. That the delay in accessing the Judgment led to my Advocates filing and serving the Notice of Appeal and letter requesting for proceedings out of time on 4th June, 2024. (Annexed hereto and marked “RGW3” a copy of the said Notice



of Appeal dated 30th April, 2024 and a letter requesting for proceedings dated 4th May, 2024”).

7. A look at the Court’s Case Tracking System (CTS) confirms that there is, indeed, on record a Notice of Appeal dated 30th April, 2024 and a letter requesting for proceedings (dated 4th May, 2024), both filed on 4th June, 2024. The Claimant/Applicant’s act of filing a Notice of Appeal on 4th June, 2024, although out of time, removed the suit herein from the realms of this Court’s Jurisdiction as far as the Court’s Judgment delivered on 25th April, 2024 is concerned, and placed it within the realms of the Court of Appeal’s Jurisdiction. An appeal to the Court of Appeal is deemed filed when a Notice of Appeal is lodged in the trial court. Any issue touching on the filed Notice of Appeal, or any issue touching on the validity or otherwise of the Notice of Appeal, can only be addressed by the Appellate Court.
8. Section 7 of the *Appellate Jurisdiction Act*, which the Claimant/Applicant invoked and sought to rely on, provides as follows:-
 - “7. Power of the High Court to extent time
The High Court may extent the time for giving notice of intention to appeal from a Judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have expired.”
9. The wording of the foregoing Section is clear and devoid of any form of ambiguity. The Section does not refer to extension of time where a Notice of Appeal has been given and/or lodged outside the stipulated period of time. Hence, this Court lacks jurisdiction to extend time where a Notice of Appeal has been given, though out of time.
10. The Supreme Court of Kenya stated as follows in *Munene - vs - King’ara & 2 Others (Petition 7 of 2014)* [2014] KESC 37 (KLR) (5th May, 2014) (Judgment):-
 - “68. . . . The question of Jurisdiction is a pure question of law. This court has on several occasions adopted the dictum of Nyarangi J.A in the Owners of Motor Vessel “Lillian S” - vs - Caltex Oil (Kenya) Ltd [1989] KLR 1 that it has to be determined from the start, and that where the Court finds it has no jurisdiction, it should down tools. This is the approach this court adopted when it considered the application for conservatory orders in this matter. We will, therefore consider this issue of nullity first, as it touches on the Jurisdiction of this Court.”
11. This Court, being bereft of Jurisdiction to entertain the application herein in view of the already filed Notice of Appeal and a letter requesting for this Court’s proceedings, must down its tools, which I now do. Without Jurisdiction, this Court cannot determine the second issue. The Claimant’s Notice of Motion dated 2nd July, 2024 is hereby struck off with no orders as to costs.
12. The Claimant/Applicant may file an appropriate application in the Court of Appeal, if she so wishes.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2025

AGNES KITIKU NZEI



JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Kagia for the Claimant/Applicant

Miss Akello for the Respondent

