



**Professional Clean Care v Fondo (Appeal E068 of 2024)
[2025] KEELRC 1070 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1070 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E068 OF 2024**

**M MBARŪ, J
APRIL 3, 2025**

BETWEEN

PROFESSIONAL CLEAN CARE APPELLANT

AND

PETRONILAR KONDE FONDO RESPONDENT

RULING

1. The ruling herein relates to a Notice to Show Cause why the appeal should not be dismissed for want of attendance and prosecution.
2. The background of the appeal is Mombasa Misc. Application No. E030 of 2024. The appellant obtained leave to file an appeal out of time. On 11 April 2024, the court granted the appellant 14 days to file an appeal and that;

The applicant to file and serve a Memorandum of Appeal within the next 14 days.
Mention to confirm the Record of Appeal on 30 April 2024.
3. On 26 September 2024, the court delivered a ruling and allowed the application dated 7 June 2024 with a stay of execution, pending hearing and determination of the appeal.
4. Upon these orders on 11 April 2024 and 26 September 2024, the appellant did nothing.
5. On 12 February 2025, the court invited parties to attend in this matter.
6. The appellant reported that the Record of Appeal had not been filed. However, this Record was filed on 5 May 2024.
7. The court allowed the appellant until 10 March 2025 to file and Serve the Record of Appeal or show cause why the appeal should not be dismissed.



8. A Supplementary Record of Appeal was filed on 4 March 2025. It included a Decree signed on 22 February 2024, a judgment dated 6 December 2023 and typed proceedings which are not certified. There is a Certificate of Correctness dated 3 March 2025. This means that the appellant had these documents all along but failed to file the complete Record of Appeal in time until the cause initiated the notice to show cause.
9. The respondent attended and submitted that the appellant is in abuse of court process after the court allowed for more time to file the Appeal on 11 April 2024 in Mombasa Misc. Application E030 of 2024 without compliance. The court further indulged the appellant to file the Record of Appeal and took the mention date due to inaction yet the appellant has opted not to comply.
10. The appellant made no submission on the Notice to Show Cause save to urge the court that the Supplementary Record of Appeal has since been filed.
11. The appellant comes to court under the background that at the time of filing the appeal, it was already out of time under the Employment and Labour Relations Court Procedure Rules. Despite the court applying its discretion to allocate more time, there was no compliance. The link herein between the appeal and Misc. Application No. E030 of 2024 will be lost if the time allocated therein is not contextualized vis-à-vis the conduct of the appellant. The discretion to allocate more time to file the Record of Appeal despite the contestations of the respondent has been abused and not well utilized by the appellant. The inaction to prosecute the appeal in time until the court had to intervene by inviting the parties to show cause if a demonstration that the appellant is not keen on these proceedings and is only enjoying the interim orders of stay to frustrate the respondent.
12. The appellant has opted to treat this appeal casually. The interim orders were to insulate the appellant pending the hearing and determination of the appeal. The continued non-attendance in this appeal to have it heard and determined is an abuse of the interim orders.
13. The court finds no good cause demonstrated on the notice to show cause why the appeal has not been prosecuted. Keeping the interim orders alive will support indolence and further delays.
Interim orders herein are vacated.
14. The Record of Appeal now complete, hearing directions shall be issued.
15. The Orders allowing stay of execution are hereby lifted. The security deposited herein shall be released to the respondent's advocates on record. On the appeal, the appellant shall take a hearing date at the registry to allow them sufficient time to prosecute the appeal.

DELIVERED IN OPEN COURT AT MALINDI THIS 3 DAY OF APRIL 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davies Wekesa

