



**Karanja v Kangethe t/a Impress Communications Printers & Stationery (Employment and Labour Relations Appeal E034 of 2024) [2025] KEELRC 1505 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1505 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E034 OF 2024**

**JW KELI, J  
MAY 23, 2025**

**BETWEEN**

**HENRY KARANJA ..... APPELLANT**

**AND**

**DAVID KANGETHE T/A IMPRESS COMMUNICATIONS PRINTERS &  
STATIONERY ..... RESPONDENT**

*(Appeal against the decision of the Judgment of Hon. B.M. Cheloti delivered on 7th November 2023 in Milimani ELRC Cause No 1694 of 2018.)*

**RULING**

1. Vide a Memorandum of Appeal dated 20<sup>th</sup> February 2024, the Appellant lodged the present appeal against the decision of the Judgment of Hon. B.M. Cheloti delivered on 7<sup>th</sup> November 2023 in Milimani ELRC Cause No 1694 of 2018. He sought the following orders:
  - a. The Appeal be allowed with costs to the Appellant.
  - b. The Judgment of Hon. B.M. Cheloti in Milimani ELRC Cause No. 1694 of 2018 and delivered on 7<sup>th</sup> November 2023 be set aside and this Honourable Court be pleased to determine the damages payable for the unlawful and unfair termination of the Appellant herein.
  - c. Any further relief that this Court may deem fit to grant.
2. Subsequently, the Appellant filed a Record of Appeal dated 26<sup>th</sup> September 2024.
3. In response to the Appeal, the Respondent filed a Notice of Preliminary Objection dated 10<sup>th</sup> January 2025.
4. Grounds of the Preliminary Objection



- a. That the Appeal was filed after the expiry of the 30 days allowed under Section 79 (g) of the [Civil Procedure Act](#).
- b. That leave was not obtained to file the appeal out of time and hence the appeal is incurably defective and therefore the court lacks jurisdiction over the appeal.

## Decision

5. The preliminary objection was canvassed by way of written submissions. Both parties complied. The issue for determination is whether the same is merited.
6. This Court's jurisdiction over the present Appeal has been challenged through the subject Notice of Preliminary Objection. In the locus classicus of [Owners of Motor Vessel 'Lillian S' v Caltex Oil \(Kenya\) Limited](#) [1989] KLR 1 The Court of Appeal expressed itself as follows on the issue of jurisdiction: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings...”
7. It is therefore imperative that I deal with this issue preliminarily.
8. Section 79G of the [Civil Procedure Act](#) 2010 provides as follows:-

“79G. Time for filing appeals from subordinate courts

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
9. The [Court Rules of 2024](#) Rule 12 (2) on time of filing appeal from the Magistrate court's decisions states:- ‘12(2) Where an appeal is from a magistrate's court or where no period of appeal is specified in the written law referred to in sub-rule (1), the appeal shall be filed within thirty days from the date the decision is delivered.’
10. It was not in dispute that the impugned decision herein was delivered on 7<sup>th</sup> November 2023. To comply with the above set out provisions, therefore, the Appellant should have filed their Memorandum of Appeal before this Court within 30 days of the subordinate court's decision, hence on or before 6<sup>th</sup> December 2023. The Court record indicates that the Memorandum of Appeal dated 20<sup>th</sup> February 2024 was actually filed on 22<sup>nd</sup> February 2024. This is admitted by the Appellant in his submissions, as well.
11. It was also not in dispute that the Appellant did not seek the leave of the Court to file the appeal out of time as contemplated and permitted by Rule 18 of the [Employment and Labour Relations Court \(Procedure\) Rules 2024](#) and Section 79G of the [Civil Procedure Act](#).
12. In his submissions dated 5<sup>th</sup> March 2025, the Appellant submits that the law provides for the remedy of seeking leave to admit an appeal filed out of time. He relies on the case of [Diplack Kenya Limited vs William Muthama Kitonyi](#) [2018] e KLR for this position.



13. I respectfully disagree with the Appellant on this issue. The admission of an already filed Memorandum of Appeal was discussed in the case of *Nicholas Kiptoo Arap Korir Salat vs The Independent Electoral and Boundaries Commission & others* [2014] eKLR with the Honourable Supreme Court holding thus:-

“In his submissions, counsel for the applicant acknowledged having already filed his appeal. He now prays for extension of time and urges that once so granted, the Petition of appeal already filed be deemed to have been duly filed.

What we hear the applicant telling the Court is that he is acknowledging having filed a ‘document’ he calls ‘an appeal’ out of time without leave of the Court. Pursuant to rule 33(1) of the Court’s Rules, it is mandatory that an appeal can only be filed within 30 days of filing the notice of appeal. Under rule 53 of the Court’s Rules, this Court can indeed extend time. However, it cannot be gainsaid that where the law provides for the time within which something ought to be done, if that time lapses, one need to first seek extension of that time before he can proceed to do that which the law requires.

By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do. To file an appeal out of time and seek the Court to extend time is presumptive and in-appropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court. It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court’s Registry. This is irregular as that document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the Court’s perusal when making his application for extension of time; and not to file an appeal and seek to legalize it.”(Emphasis given) The decision is binding on this court. In the instant case the appellant filed the appeal out of time of 30 days post decision of the lower court without seeking leave of court on extension of time. The argument that the delay in filing the Appeal was occasioned by the Appellant’s inability to obtain typed proceedings from the lower Court as evidenced by the duly filed Certificate of Delay is rejected. The Appellant did not require typed proceedings in order to prepare and file a Memorandum of Appeal.

14. The circumstances addressed in the above case in the Supreme Court are analogous to the present case. I uphold the decision of the Supreme Court above and strike out the Memorandum of Appeal dated 20<sup>th</sup> February 2024, and Record of Appeal dated 26<sup>th</sup> September 2024 for being filed out of time without leave of the court, with costs to the Respondent.

15. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY, 2025.**

**J.W. KELI,**

**JUDGE.**

In The Presence Of:

Court Assistant: Otieno



Appellant – Maingi Musyimi & Associates Advocates

Respondent – Gathoni Kariuki Advocates

