



**Union of National Research & Allied Institutes Staff of Kenya v National Museums of Kenya; Kenya Union of Commercial, Food and Allied Workers (Interested Party) (Cause E641 of 2022) [2025] KEELRC 1350 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1350 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE E641 OF 2022**

**NJ ABUODHA, J**

**MAY 9, 2025**

**BETWEEN**

**UNION OF NATIONAL RESEARCH & ALLIED INSTITUTES STAFF OF KENYA ..... APPLICANT**

**AND**

**NATIONAL MUSEUMS OF KENYA ..... RESPONDENT**

**AND**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS ..... INTERESTED PARTY**

**RULING**

1. The Claimant herein filed application dated 10<sup>th</sup> July, 2024 seeking for orders of leave to file Notice of Appeal out of prescribed time against the Ruling of this court delivered on 27<sup>th</sup> May,2024.
2. The application is supported by grounds on the face of the Application herein and the Affidavit of Zacharia Achacha the Secretary General of the Applicant who averred that: -
  - a. On 27<sup>th</sup> May,2024 Honourable Justice Jorum Nelson Abuodha delivered a ruling in this matter which upheld the Preliminary Objection raised by the Interested Party. That the ruling was delivered earlier than the scheduled date of 31<sup>st</sup> May,2024 when it was scheduled to be delivered. That on 31<sup>st</sup> May,2024 the court was not sitting and an enquiry from the registry gave feedback that a new date for the ruling would have been communicated to the parties.
  - b. That no new date for the ruling was communicated and they realized that a ruling had in fact been delivered on 27<sup>th</sup> May, 2024 even though the CTS indicated that the said ruling was delivered on 31<sup>st</sup> May, 2024. That upon receiving the ruling they reviewed it and found



themselves aggrieved and dissatisfied with the decision of the court and therefore instructed their advocate on record to appeal to the court of Appeal.

- c. That the prescribed 14-day period for filing a Notice of Appeal against the said Ruling had already lapsed by the time they received the said ruling of the court hence necessitating instigation of this application. That their suit raised weighty legal issues and it needed to have gone for hearing on merits hence the need to institute the appeal.
  - d. That the delay in filing the Notice of Appeal was not intentional but was due to the late receipt of the Ruling via CTS which was an act beyond their control considering that they were never informed that the court delivered an e-ruling.
  - e. That if the extension of time is not granted they stand to suffer irreparable loss and damage as they will be deprived of the opportunity to access their right of appeal. That the Respondent and the Interested Party will not suffer any prejudice if the extension of time is granted as they will have the opportunity to respond to the same.
3. In response the Interested Party filed its Replying Affidavit sworn on 17<sup>th</sup> October, 2024 sworn by Mike O. Oranga the National Organization Secretary of the Interested Party who averred that: -
- a. That the present application seeks to appeal out of time a ruling delivered on 27<sup>th</sup> May, 2024. That the reason given was that the ruling was delivered without notice and the Claimant's advocate was never informed of the ruling date. That the chronology of events shows lack of concern on the part of the Claimant to attend court as directed and to observe and adhere to the dates as given in court.
  - b. That the intended appeal has the sole purpose of delaying Industrial engagement between the Respondent and the Interested Party with a view to subjecting unionisable employees of the Respondent to further suffering hoping to reap from disillusionment created by several suits lodged against the Interested Party by the stubborn unions the Claimant included.
  - c. That the ruling annexed to the application does not have dates on it, the notice of appeal intended to be filed out of time was not annexed to the application as well as draft memorandum of appeal to assist the court discern the grounds as well as success of the appeal. That the Court of Appeal Rules dictates that Notice of Appeal need be filed within 14 days and the appeal be lodged in 60 days thereafter. That the Claimant is trying to appeal out of prescribed timelines.
  - d. That an application seeking enlargement of time to file appeal out of time must show that the Applicant has a good cause for doing so. That there are principles which guide the court's discretion in enlarging the time to file appeal out of time. That the Applicant confirms knowing the Ruling would be delivered on 17<sup>th</sup> May, 2024 which was differed to 31<sup>st</sup> May, 2024.
  - e. That it was duty and responsibility of the Claimant to follow up on the ruling. That the Claimant did not decide immediately on what to do with the ruling for the reason that the chances of their appeal succeeding was nil.
4. The Application was dispensed of by written submissions.

### **Claimant's Submissions**

5. The Claimant filed written submissions dated 24<sup>th</sup> November, 2024 through their Advocates Japheth Kenvine Felix & Smith Advocates LLP and on the issue of whether the application raises sufficient cause and merits to be filed out of time counsel submitted that the Court of Appeal Rules at Rule



- 77 provides that the Appeal could only be filed after giving notice after 14 days after delivery of the Ruling. That the Claimant learned of the court's ruling on 30<sup>th</sup> June, 2024 which was delivered on 27<sup>th</sup> May, 2024 past the 14 days and it could only seek leave which it has done.
6. Counsel submitted that the same should not be construed as delay or afterthought. That the Claimant could not file Notice of Appeal since they were operating outside time while relying on the case of Nicholas Kiptoo Arap Korir Salt v Independence Electoral and Boundaries Commission & 7 Others (2014) eKLR that leave has to be sought first. Counsel further relied on the case of Chizi & 2 Others v Naserian Security Ltd & Another (2023) KEHC 1181(KLR) and the above case of Nicholas Kiptoo on the principles to guide the court while granting leave to appeal out of time.
  7. Counsel submitted that on the ingredient of delay that they came to learnt of the Ruling on 30<sup>th</sup> June, 2024 after it was posted on the CTS on 31<sup>st</sup> May, 2024 and within 10 days after discovery of the ruling they made the application before this court. That the appeal is a right of a party which the Claimant missed out of sufficient reasons and its application should be allowed. That the expectation for the Claimant to file Notice of Appeal would not apply since 14 days' timeline were from the day of delivery of the Ruling and not the day they came to know about the Ruling while relying on the case of Ocean Freight Shipping Company Limited v s Oakdale Commodities Limited (198 of 1995) (1997) KECA 222 (KLR) (9 July, 1997).
  8. On the success prospects of the appeal counsel submitted that the issue was to be determined on merit at the right opportunity. That since the Claimant was seeking the application at the trial court where record of appeal lies then the court could determine such an issue while relying on the Chizi case above. That the Claimant's appeal had prospects of success.
  9. On the prejudice counsel submitted that the Respondent does not stand to suffer any prejudice as the Claimant has a right to appeal the Respondent also enjoys the judgment in its favour. That the Respondent will have a right to be heard on appeal and advance on constitutional right on access to justice under Article 48.
  10. On the issue of whether the court should exercise discretion to grant leave and admit appeal out of time counsel submitted that the Claimant should be allowed to file Notice of Appeal out of time while relying on among others the case of Paul Musili Wambua vs Attorney General & 2 Others (2015) eKLR on what the court needs to consider as submitted above. That the Claimant laid before the court sufficient and concrete reasons as to why it did not appeal on time and the court should exercise its discretion by allowing the application.

### **Interested Party's Submissions**

11. The Interested Party filed its submissions dated 20<sup>th</sup> December, 2024 through its General Secretary Boniface M. Kavuvi. Mr Kavuvi submitted that the Claimant in its submission stated that they appeared in court on 31<sup>st</sup> May, 2024 by which date the Ruling had already been delivered on 27<sup>th</sup> May, 2024. That they confirmed that the ruling was posted in the CTS three days after delivery hence they were still within the prescribed timeline for lodging Notice of Appeal but they ignored to do so on time.
12. Mr. Kavuvi submitted that Rules 84 and 97 of the Court of Appeal Rules were mandatory and the Claimant had no recourse in this court to seek to appeal out of time. That while the Claimant relied on the case of Chizi above the same required that there be arguable appeal and since no draft memorandum of appeal was attached there was no way the court would ascertain the arguability of the appeal.



13. Mr. Kavuvi submitted that where an Alternative Dispute Resolution Mechanism was available and a party has opted to go that route the same must be exhausted fully before approaching the court. That the prayer to grant leave to file appeal out of time was discretionary to court which should be exercised judiciously and not cause prejudice to the other party. That the Claimant did not demonstrate sound and proper reasons to move the court to exercise its discretion. That the court already rendered its decision and was functus officio on the matter.

### **Determination**

14. The operative provision on Notice of Appeal from the Employment and Labour Relations Court is the Court of Appeal Rules 2022 where Rule 77 provides as follows: \_
- (1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court. (2) Each notice under subrule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.
15. The above provision clearly shows that a Notice of Appeal is to be filed 14 days after delivery of the Judgment in the trial court which in this case was Employment and Labour Relations Court Nairobi. In this case the Judgment was delivered on 27<sup>th</sup> May, 2024 which means 14 days were ending on 11<sup>th</sup> June, 2024. This court will not analyze the merits or demerits of this application since it is clear the above Rules were set by the Court of Appeal. Implying this Application ought to have been made at that court. It would seem by the Rules of the Court of Appeal that an application seeking leave to file notice of appeal out of time and the appeal are done at the Court of Appeal and not this court. This court after rendering its ruling on this matter became functus officio and cannot consider whether to allow Notice of Appeal and an Appeal out of time when the rules of the Appellate Court are quite clear that it is the one to consider the merits and or demerits of such an application. In other words, this Court does not have jurisdiction to grant the orders sought in the application.
16. In conclusion the Claimant's Application dated July 10, 2024 is found unmerited and is hereby dismissed with costs.
17. It is so ordered.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2025**

**DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF MAY, 2025**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

