



REPUBLIC OF KENYA



KENYA LAW
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**Nyambu v Consolbase Limited (Cause 63 of 2019)
[2025] KEELRC 1932 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1932 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 63 OF 2019
M MBARŪ, J
JUNE 30, 2025**

BETWEEN

BALDWIN MWANYALO NYAMBU CLAIMANT

AND

CONSOLBASE LIMITED RESPONDENT

RULING

1. The respondent, Consolbase Limited, filed an application dated 26 March 2025, under the provisions of Rules 18, 21, 45 and 8- pf the Employment and Labour Relations (Procedure) Rules, seeking orders that there be a stay of execution of the judgment delivered on 31 January 2025, pending the hearing of the intended appeal. The respondent is also seeking leave to appeal out of time and to treat the Notice of Appeal dated 24 March 2025 as having been filed within time.
2. The application is supported by the affidavit of Sauda Said, the administrator and human resources manager, who states that judgment was delivered herein on 31 January 2025 and the court granted a 30-day stay of execution. The time has lapsed, and being aggrieved, the respondent wishes to file an appeal to the Court of Appeal and therefore seeks leave to file the appeal out of time. There is a good and arguable appeal, and unless the order of stay of execution is granted, it will be rendered nugatory.
3. Sauda Said avers in the affidavit that the respondent is ready and willing to comply with the conditions granted by the court pending the hearing and determination of the appeal. There is a Notice of Appeal dated 24 March 2025 seeking to set aside the judgment herein, and unless an order of stay is granted, the respondent shall suffer irreparable loss and damage.
4. The claimant filed his Replying Affidavit and states that the current application is an abuse of court process and should be dismissed with costs. There is no authority from the deponent to support the application through a company resolution.



5. The claimant asserts that he filed his claim in 2019 after his summary dismissal. Following the delivery of judgment on 31 January 2025, the court granted 30 days for an appeal, which lapsed, and a notice was issued to comply with the judgment. No appeal has been filed, and where the respondent was required to file one, there has been no compliance with Rule 77(2) of the Court of Appeal Rules.
6. The claimant states that he has since submitted a bill of costs and served the respondent, who agreed to tax the costs by consent at Ksh. 000. The orders sought are unfounded, and the court lacks the jurisdiction to entertain an application for leave to file an appeal out of time.

Both parties attended and opted to rely on the filed affidavits.

Determination

7. The respondent is seeking a stay of execution of the judgment delivered on 31 January 2025, pending the hearing and determination of the intended appeal, and also seeking leave to appeal out of time.
8. The respondent acknowledges that upon delivery of judgment herein on 31 January 2025, the court granted a 30-day stay of execution.
9. Following the court's order on 31 January 2025, the parties had a right of appeal under section 17 of the *Employment and Labour Relations Court Act*. The court granted a stay of execution to enable the parties to assert their rights.
10. No Notice of Appeal was filed, nor was any appeal filed to the Court of Appeal.
11. The applicant's request to stay execution pending the hearing and determination of the intended appeal has not been realised. The intention to appeal remains bare.
12. On the second limb of the application seeking leave to file an appeal out of time, leave to appeal relates to situations where it is not automatic or as of right to appeal to the Court of Appeal.
13. Where the right to appeal to the Court of Appeal is not secured within the timelines specified under Section 17 of the *Employment and Labour Relations Court Act*, read together with the Court Rules, leave to file the appeal out of time should be granted to the appellate court. The respondent has sought to rely on Rule 18 of the Employment and Labour Relations Court Procedure. However, these rules apply only to appeals from subordinate courts to the court. Leave to file an appeal out of time concerning a court's judgment must comply with the Court of Appeal rules, as held in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR and the Supreme Court Decision in *Fahim Yasin Twaha v Timamy Issa Abdalla & 2 others* [2015] eKLR.
14. Therefore, in this case, the court finds no justified reasons to stay the execution of the judgment, and there is also no jurisdiction to extend the time to file an appeal to the Court of Appeal out of time.
15. Accordingly, the application dated 26 March 2025 is without merit and is hereby dismissed, with the respondent to bear the costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF JUNE 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and



