



**Sheer Logistic Management Consultant v Ombui & another (Appeal
257 of 2024) [2025] KEELRC 1957 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1957 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL 257 OF 2024
K OCHARO, J
JUNE 26, 2025

BETWEEN
SHEER LOGISTIC MANAGEMENT CONSULTANT APPELLANT
AND
MOURINE NYABOKE OMBUI 1ST RESPONDENT
MOURINE NYABOKE OMBUI 2ND RESPONDENT

RULING

Introduction

1. The Court is seized of an application brought by the Applicant seeking leave to appeal out of time against the judgment delivered on 23rd September 2024, in Mombasa CMELRC Cause No. E1183 of 2021. The application is expressed to be pursuant to the provisions of Section 79G of the [Civil Procedure Act](#) and Order 51, Rule 1 of the [Civil Procedure Rules](#). It is supported by the affidavit sworn by Sylvanus Baraza, sworn on the 23rd November 2024, and the grounds set forth on the face of the Application.
2. The Respondent vehemently opposes the application via her replying affidavit sworn on 11th December 2024.

The Applicant's Application

3. The Applicant states that the Respondent filed a suit against it and judgment was delivered therein on the 23rd September, 2024.
4. It further states that another suit was filed against it in the same trial court, involving the same subject matter, namely ELRC Cause No—E 486 of 2024, whose judgment was delivered on 28 October 2024.



5. The Court erred by issuing the said judgments on cases involving identical facts in the same trial court, without providing a clear basis and reasons for such a determination. It is for this reason that the Applicant feels compelled to appeal against the judgment, the subject matter of this application.
6. It is further contended that the Trial Court misdirected itself when it, in its said judgment, failed to analyse sufficiently the overwhelming evidence that the Applicant presented.
7. The applicant is likely to suffer irreparable loss, as it partially settled the suit during mediation but disputed the Respondent's claim for unfair termination.
8. Because the subject matter in the suit, whose judgment is the focus of this application and a series of other cases, was the same, it did not provide its Advocates with instructions in time to challenge the judgment by way of appeal.
9. The failure to appeal on time was inadvertent and resulted from its delay in waiting for the outcome of other similar suits.
10. That the instant application has been brought without undue delay. It was filed within 35 days after the trial court granted the stay of execution.

Respondent's Response

11. The Respondent opposes the application through the replying affidavit mentioned above, arguing that the Applicant has not demonstrated sufficient cause for the delay and that the application is without merit. The Respondent also contends that the delay is inordinate.
12. She states that the trial court delivered the judgment via email on 23rd September 2024.
13. Mombasa ELRC E 486 of 2021 was a separate suit. The suit and the one whose judgment the Respondent intend to appeal were heard on different dates before the trial court.
14. The intended appeal has no merit, considering that the trial court sufficiently identified and analysed issues in controversy before rendering its judgment.
15. Following the expiration of the 30-day stay period granted by the learned trial Magistrate, the Respondent was issued with a notice of entry of judgment and a draft decree on 18th November 2024.
16. The Applicant has come to Court with unclean hands. The application and the intended appeal are only meant to deny her the fruits of her judgment unjustly.

Issue for Determination

17. The sole issue for determination is whether the Applicant has demonstrated sufficient cause to warrant the extension of time to file an appeal out of time.
18. In determining whether to extend time, the court is guided by a well-established body of jurisprudence. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, the Court of Appeal held that:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It should be exercised judicially and not arbitrarily or capriciously. In general, the matters which this Court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly, the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted



19. The burden rests with the Applicant to explain each period of delay and demonstrate that the delay was neither inordinate nor deliberate. See also *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR.
20. The record shows that the impugned judgment was delivered on 23rd September 2024, but the present application was only filed on 23rd November 2024. This reflects a delay of approximately two months.
21. I have carefully examined the Applicant's affidavit and, specifically, the reasons it provides for the delay in filing the appeal. I must state that these reasons are general in nature and least persuasive. I do not see how the other matter informed the Respondent's failure to instruct its Counsel in a timely manner to appeal.
22. Having found that the Respondent did not provide any sufficient and persuasive reason for the failure to file its appeal within the time limit, I consider it unnecessary to proceed with examining the other factors, and I hereby find the application dated 23rd November 2024 to be without merit; it is accordingly dismissed.
23. Additionally, as the appeal herein was filed without leave of the Court, it is hereby struck out with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26TH DAY OF JUNE 2025.

OCHARO KEBIRA

JUDGE

