



Nderitu v Xaverian Brothers (K) Trustees Registered (Employment and Labour Relations Appeal E006 of 2025) [2025] KEELRC 1919 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1919 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E006 OF 2025**

**DKN MARETE, J
JUNE 25, 2025**

BETWEEN

AGATHA NYARUAI NDERITU APPELLANT

AND

XAVERIAN BROTHERS (K) TRUSTEES REGISTERED RESPONDENT

RULING

1. This is an application by way of a Notice of Preliminary Objection dated 12th February 2025. It seeks the following. It comes out as follows;
 1. That the Appellant's Advocate, Catherine Wanjiku Kariuki, was not eligible to lodge or prosecute the appeal as she lacked a valid 2025 Practising Certificate at the time of filing;
 2. That this Court lacks territorial jurisdiction to hear an appeal emanating from Ngong Law Courts in Kajiado County; and
 3. That the appeal fails to meet the threshold for documents required under the Civil Procedure Rules.
2. The Appellant filed an appeal challenging the judgment of the trial court delivered on 8th November 2024 in Ngong CMELRC No. E010 of 2022. The Respondent contends the appeal is incompetent due to the alleged defects raised in the Preliminary Objection.
3. The Respondent relied on an annexed Law Society Kenya (LSK) records showing Advocate Kariuki's "inactive" status as at 12th February 2025, Annex 1 to the P.O. and Section 9 of the *Advocates Act* which prohibits unqualified persons from acting as advocates. She also ought reliance on the law on geographical jurisdiction limitations under Article 162(2) of *the Constitution*.
4. The Appellant's responded through two affidavits sworn on 14th and 18th February 2025 whereby (Counsel), Advocate Kariuki demonstrated: that her 2025 Practising Certificate was issued on 14th



February 2025 through annexure CWK4a and the Law Society of Kenya portal's confirmation of "active" status in CWK4b. It is counsel's case that delay in certification was due to unupdated CPD points despite attending seminars as indicated in emails at CWK1. This was also as a consequence of medical leave for high-risk pregnancy per the doctor's letter at CWK2 and L.L.M. examinations at the University of Nairobi.

5. The issues for determination are;
 1. Whether Advocate Kariuki had capacity to file the appeal;
 2. Whether this Court has territorial jurisdiction;
 3. Whether the appeal meets procedural requirements.
6. On the issue of issue of Advocate's Capacity, this Court notes that the preliminary objection. Was filed on 12th February when the Advocate's status was indeed "inactive". However, by 14th February 2025, the Law Society of Kenya had issued a valid certificate (CWK4a) and updated her status to "active" (CWK4b). It is trite practice that as held in *Mumo v Makau* [2005] eKLR, technicalities should not override substantive justice. The belated regularization cures any initial defects on the advocate's eligibility to practice. This is pronounce in the authority of *Jasbir Singh Rai v Tarlochan Singh Rai* [2014] eKLR. The objection on the ground of incapacity is therefore overruled.
7. The second issue raises a matter on the principle of territorial jurisdiction. The Respondent posits and submits that Ngong matters fall outside this court's jurisdiction. This is Nairobi. Section 12 of the *Employment and Labour Relations Court Act*, 2014 provides that the Employment and Labour Relations Court has nationwide jurisdiction. The Court's registry at Nairobi may and can handle appeals from any magistrates' court nationally. The objection is without merit.
8. On the final issue of procedural compliance, no evidence was adduced to prove non-compliance with Order 42 Civil Procedure Rule, 2010 as claimed by the objector. The record shows all requisite documents were filed.
9. The Preliminary Objection therefore comes out as is wholly unmerited. The Respondent's attempt to exploit technicalities is disapproved, particularly given: the Advocate's valid compliance and medical justifications for delay. This also cured by the Appellant's indigent and health-challenged status. Altogether, this is crowned by Article 159(2)(d) of *the Constitution* of Kenya, 2010 which debars the employment of procedural technicalities to subsume appropriate legal process.
10. This is a cross cutting application in the form of a preliminary objection. It comes out in answer to the Appellant/Applicant's application dated 10th January, 2025 to which the Respondent answered by way of the Respondent's Grounds of Opposition dated 10th March, 2025 rubbishing the same. This court is therefore forced to determine the two at one blow. This avoids duplicity and is in compliance with this court's overriding objectives of expeditious delivery of justice.
11. I am therefore inclined to disallow the preliminary objection and order relief as follows;
 - i. The application dated 10th January, 2025 be and is hereby allowed.
 - ii. The Appellant/Applicant is awarded enlargement of time to file her appeal.
 - iii. The Appellant/Applicant is awarded leave to file a Memorandum of Appeal per their attached draft.



- iv. The Appellant/Applicant is further awarded leave to file a Record of Appeal in respect of the Judgment of the Chief Magistrate’s Court in Ngong delivered on 8th November, 2024 in C.M.E. E10 of 2022 inter partes.
- v. The costs of this application shall be borne by the Respondent/Objector.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

- 1. Miss Kansiiime Gedion instructed by The Kagoma Advocates for the Respondent.
- 2. Miss Kariuki instructed by GNK & Associates LLP for the Appellant/Respondent.

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