



Platinum Outsourcing & Logistics (EA) Ltd v Kenya Union of Commercial, Food and Allied Workers (Cause 849 of 2019) [2025] KEELRC 1916 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1916 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 849 OF 2019
DKN MARETE, J
JUNE 25, 2025**

**BETWEEN
PLATINUM OUTSOURCING & LOGISTICS (EA) LTD APPLICANT
AND
KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS RESPONDENT**

RULING

1. This is application dated 27th August, 2024 seeking various orders including leave to file an appeal out of time and a stay of execution of the judgment delivered on 24th April, 2024. The Respondent, opposed the application through a Replying Affidavit sworn on 4th October, 2024.
2. The dispute stems from the termination of employment of one Catherine Munyao a grievant represented by the Respondent. The Respondent filed a claim on 24th October, 2019, alleging unfair termination. Judgment was delivered on 24th April, 2024, awarding the grievant Kshs. 152,850, comprising one month's salary in lieu of notice, unpaid days worked, service pay, and twelve months' compensation for unlawful termination. The Applicant now seeks to appeal this judgment but acknowledges that the Notice of Appeal was filed out of time due to alleged miscommunication and technical issues with email delivery.
3. The Applicant's submission hinge on two main issues: whether the threshold for granting a stay of execution has been met and whether leave should be granted to file the appeal out of time.
4. On the first issue, the Applicant argues that substantial loss will occur if the decretal sum is paid to the Respondent, as the Respondent may not be able to refund the amount should the appeal succeed. They rely on Tropical Commodities Suppliers Ltd & Others v International Credit Bank Ltd (in liquidation) (2004) E.A. LR 331 where substantial loss was defined as any loss of real worth or value. Further, they cite Masisi Mwita v Damaris Wanjiku Njeri [2016] eKLR and National Industrial Credit Bank v



Aquinas Francis Wasike & Another [2006] eKLR to emphasize that the evidential burden shifts to the Respondent to prove their ability to refund the decretal sum, which they claim has not been done.

5. The Applicant also asserts that they are willing to furnish security, proposing that the decretal sum be deposited in a joint interest-earning account. They cite Jacob Magondi *v Action Africa Help International Petition E199 of 2021* and Focin Motorcycle Co. Limited v Ann Wambui Wangui & Another [2018] eKLR to support their readiness to provide security.
6. Regarding the delay in filing the appeal, the Applicant attributes it to technical issues with email communication, which they claim caused a delay in receiving instructions. They rely on Ganga v Laptrust (Umbrella) Retirement Fund Board of Trustees & Another [2023] KEELRC 3044 and Philip Chemwolo & Another v Augustine Kubede (1982-88) KAR 103 where courts held that mistakes by advocates should not unduly prejudice clients.
7. On the second issue, the Applicant seeks leave to file the appeal out of time under Rule 75(1) and (2) of the Court of Appeal Rules. They further seek to rely on authority of Imperial Bank Ltd (in receivership) and Another v Alnasir Popat and 18 Others [2018] eKLR and Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2015] eKLR both of which outline factors for extending time, including the length of delay, reasons for delay, and the merits of the intended appeal.
8. The Respondent, through their Replying Affidavit and submissions, opposes the application on several grounds. Firstly, they argue that the Applicant has not provided sufficient evidence of a filed Notice of Appeal as required under Rule 59(1) and 61 of the Court of Appeal Rules. They contend that the alleged Notice of Appeal was never served on them, rendering the application defective. Besides, the Respondent dismisses the Applicant's excuse of bounced emails as unreasonable, arguing that alternative means of communication such as phone calls or physical delivery should have been used. They assert that the delay of over five months is inordinate and unjustified.
9. The Respondent on the other hand the merits of the intended appeal, stating that the judgment was based on clear violations of the *Employment Act*, 2007 particularly Sections 10(5), 41, 43, and 45 which mandate consultation before contract changes and procedural fairness in termination. They argue that the appeal is frivolous and has no chance of success.
10. Finally, the Respondent posits and submits that the Applicant has not provided any security for the decretal sum, contrary to Order 22 Rule 22(3) of the Civil Procedure Rules, which requires such security as a precondition for stay of execution.

The key issues for determination are:

- i. Whether the Applicant has met the threshold for granting a stay of execution.
 - ii. Whether the Applicant should be granted leave to file an appeal out of time.
11. On the first issue, Order 42 Rule 6 of the Civil Procedure Rules sets out the conditions for granting a stay of execution. The Applicant must demonstrate substantial loss, the application must be made without unreasonable delay and also an offer provision security.
 12. The Applicant has argued that substantial loss will occur if the decretal sum is paid as the Respondent may not refund it if the appeal succeeds. While the Applicant cites persuasive authorities the Respondent counters that the Applicant has not proven the Respondent's inability to repay.



13. On delay, the Applicant attributes the lapse to email issues, but the Respondent rightly points out that alternative communication methods were available. The delay of over five months is significant and unreasonable in the circumstances given the explanation provided.
14. Regarding security, the Applicant has expressed willingness to deposit the decretal sum in a joint account, which aligns with judicial precedents such as *Focin Motorcycle Co. Limited v Ann Wambui Wangui & Another*.
15. On the second issue, the principles for extending time are well-established in *Nicholas Kiptoo Arap Korir Salat v IEBC* and *Imperial Bank Ltd v Alnasir Popat*. The court must consider, the length and reason for the delay, the merits of the intended appeal and prejudice to the parties. The Applicant's delay is lengthy, and inexcusable. The email issue is not a laudable excuse. The intended appeal raises arguable points on the quantum of compensation which are not frivolous. However, the Respondent's dalliance on non-service of Notice of Appeal is disturbing. This dements the case for Applicant.
16. I am therefore inclined to disallow the application with orders that parties bear their costs of the same.

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

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Keter instructed by Chemgor Kosgei & Company Advocates for the Respondent/Applicant.

Lilian Manene for the Claimant/Respondent.

