



**Juma Hardware Limited v Tungani & 2 others (Appeal  
E189 of 2024) [2025] KEELRC 1831 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1831 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E189 OF 2024**

**JW KELI, J  
JUNE 20, 2025**

**BETWEEN**

**JUMA HARDWARE LIMITED ..... APPELLANT**

**AND**

**MIRIAM TUNGANI & 2 OTHERS ..... RESPONDENT**

**RULING**

1. The applicants through co-applicant Miriam Tungani filed application through Notice of Motion dated 10<sup>th</sup> March 2025 seeking the following orders :-
  - i) Applicants be allowed to prosecute this matter in-person, and as a class suit.
  - ii) This matter be certified urgent and be heard ex-parte in the first instance.
  - iii) Pending hearing of this application, Gikera & Vadgama Advocates and/or appellant to pay decretal sum in the appeal judgment of 5th February, 2025 (Hon. Lady Justice Jemimah Wanza Keli); deposit balance of the amount held by advocates with the 10024 court; and, file confirmation of compliance with court within 3days of Order.
  - (iv) Pending hearing of this application, Gikera & Vadgama Advocates and/or appellant to supply us with appellant's current 'renewed' Business Permit, and contract of the merger transaction explaining formation of ASL Limited-trading division.
  - (v) The Honourable Deputy Registrar to effect Service of Interim Orders upon parties.
  - (vi) Gikera & Vadgama Advocates and/or appellant to settle debt of the Judgement and Decree of 9th March, 2023 using decretal sum held by advocates in a joint account.



- (vii) Gikera & Vadgama Advocates and/or appellant to pay applicants total accrued interest on the decretal sum from 9th March, 2023 together with cost of this suit; and compensate for failure to issue our Certificates of Service.
2. The application was premised on the grounds on the face of the application and affidavit of Miriam Tungani sworn on 11<sup>th</sup> March 2025 to wit :-
1. Their debt in the Judgment and Decree of 5<sup>th</sup> February, 2025 after their repeated service of the decree and lapse of the 30-day stay has not been paid and relied on affidavit of service for decree and account of payment annexed herewith and marked as MT-01.
  2. Appellant has never supplied applicants with certificates of service as provided for by law.
  3. The firm of Gikera & Vadgama Advocates did not have proper instructions to file appellant's appeal, the court never issued an order, and parties have never registered a consent to effect the change of appellant's advocate in line with the law.
  4. On 12<sup>th</sup> April, 2023 the appellant filed Application dated 11th April, 2023 for extension of time to file its draft Memorandum of Appeal dated 11th April, 2023 after a delay of four (4) days but did not apply for an order to effect change of advocate; see both appellant's Application and Ruling in ELRCMISC No. E081 of 2023 is annexed herewith and marked as MT-02.
  5. On 14<sup>th</sup> April, 2023 the court issued an interim order under a certificate of urgency. The order did not effect appellant's change of advocate but required parties to file and serve all their pleadings, including Memorandum of Appeal, before hearing of 3<sup>rd</sup> May, 2023.
  6. The Appellant never applied for further extension of time or seek court's guidance and direction, after further delay in filing its Memorandum of Appeal. Also, it never applied for extension of time to file Record of Appeal, and Letter (sic) Request for proceedings out of time.
  7. The CTS shows that the lodging and payment of requisite fees for Record of Appeal and Memorandum of Appeal were done on 9<sup>th</sup> September, 2024 and 5<sup>th</sup> July, 2024 respectively; see two receipts and invoice issued by court annexed herewith and marked as MT-03.
  8. The CTS shows that Gikera & Vadgama Advocates made three Lodgings only in MCELRC No. E438 of 2021, that is, the e-filings of Advocates' Consent on 14<sup>th</sup> April, 2023; Request for Proceedings on 10<sup>th</sup> January, 2024; and Application for Certificate of Delay on 18<sup>th</sup> July, 2024; see bundle of the listed documents annexed herewith and marked as MT-04.
  9. Proof of appellant's non-existence include online publications by ASL Limited and Ramco Group about the merger involving the appellant to form ASL Limited -trading division, an entity with a different identity. Also, ASL Limited trading division has posted on its website: <https://www.asltrading.co.ke/contact-us/> (accessed on the 10<sup>th</sup> March, 2025) about the occupation of appellant's physical location; see online publications about the merger annexed herewith and marked as MT-05.
  10. At paragraph 26-27 of the Ruling in Peter Mathenge T/A Imperial Water Services - V- Juma Maloba Juma ELRCA No. E210 of 2023 [2024] eKLR K. Ocharo J cited Nicholas Salat (Supra) and held that a party cannot commit an illegality of filing an appeal out of time and without leave, and ask the court to regularize the illegality by deeming the appeal document as duly filed; see the Ruling cited annexed herewith and marked as MT-06.



11. The applicant urged the court to help them recover the decretal sum together with total interest accrued, of the Decree of 9th March, 2023 in MCELRC No. E438 of 2021 (Hon. S. A. Opande]; and, award costs of this suits; see the decree & KCB bank deposit slip of amount held by advocates annexed herewith and marked as MT-07.
3. The background of the application was that this n bcourt on appeal set side the judgment of the lower court and entered judgment on the 5<sup>th</sup> February 2025 where it held the redundancy was proper and in place entered judgement for the claimants(applicants) for payment of terminal dues as per the tabulations before the trial court by the Appellant and the 2<sup>nd</sup> respondent jointly and severally as follows:-
  - a. Mirima Tungani gross pay of Kshs. 60,091 with interest at court rates from the date of the judgment of the lower court,
  - b. Eunice Khayesi Gross pay at Kshs. 88,572 with interest at court rates from the date of judgment,
  - c. Paul Chuma Gross pay of Khs. 78,069 with interest at court rates from the date of judgment.
  - d. Costs of the suit.
4. The application before the court questioned the validity of the decided appeal on ground that the law firm appearing for the appellant, Gikera &Vadgama advocates, did not have proper instructions to file the determined appeal , that the law firm in application before the court for extension of time did not seek to effect change of advocates under Order 9 Rule 9 of the Civil Procedure Rules. That the appellant ceased to exist physically after the merger to form ASL limited hence a new entity. That the appeal was filed out of time without obtaining leave from some of the disgruntled third parties. The applicants further said the certificate of delay in the appeal was obtained irregularly.
5. The Court on perusal of the application and the grounds raised, found that it had addressed the issues raised in the application with finality in it appellate judgment of 5<sup>th</sup>February 2025. At paragraph 3 the issues raised by the applicant were stated to be as follows:- ‘The appeal was opposed by the respondent through notice of preliminary objection dated 20<sup>th</sup> September 2024 seeking for the appeal to be struck out because the appellant lacked locus standing and was incapable of sustaining a cause of action in the appeal having merged with Ramco Hardware Limited 2 years ago to form ASL Limited; The appellant did not seek leave of the court for its appeal to be admitted out of time the memorandum of appeal having been file don the 5<sup>th</sup> July 2024 more than a year after the statutory period of 30 days. The judgment was delivered on the 9<sup>th</sup> of March 2023; The appellant was in contempt of court having disobeyed the stay order of Justice Nzioki Wa Makau in ELRC Misc.E081 OF 2023. That the Appellant did not seek an extension of time to deposit the decretal amount outside the ordered time and did not pay the amount of the decretal amount for the part of the claim that was settled by agreement of the parties; the appeal was based untrue grounds; the certificate of delay dated 31<sup>st</sup> July 2024 was irregular and was not supported by evidence; they sought the appellant’s advocates to release the decretal sum.’
6. In the judgment the court addressed the issues as follows:-

The court noted that vide ruling dated 12<sup>th</sup> July 2023 produced by the Respondent at page 13 of their written submissions pursuant to a Misc. Application by the appellant, among others, seeking for leave of the court to file appeal out of time and for the draft memorandum of appeal dated 11<sup>th</sup> April 2023 to be deemed as duly filed; the court Justice Nzioki Wa



Makau through vide ruling delivered on 12th July 2023 allowed the application and granted leave to the Appellant to file the appeal out of time. The court finds that the issue of whether the appeal was proper was moot as the appeal dated 11<sup>th</sup> April 2023 was deemed to have been filed and properly on the record according to the ruling. The certificate of delay is a document of the court and a party cannot answer on its credibility. Once a party applied for the certificate and it was granted that is a court record. A notice of preliminary objection would not be a proper way to move the court to question the credibility of a certificate of delay. A notice of preliminary objection is on points of law as held in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say:..."A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration." At page 701 paragraph B-C Sir Charles Newbold, P. added the following:"A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...." The court for the foregoing reasons held the notice of preliminary objection to be without merit and dismissed the same with costs in the cause. "The court declares that it is now functus officio on the validity of the appeal. The applicants ought to move the higher court if they are not satisfied with the decision.

7. The court found difficult in understanding the orders sought by the applicant. The order for deposit of the decretal sum held by Gikera & Vadgama Advocates to pay the decretal sum in the appeal judgment of 5<sup>th</sup> February 2025; deposit balance of the amount held by the advocates with the court related to execution. The deposit was security for performing the judgment. The lawfirm of Gikera & Vadgama stated that the applicant's former advocates Messers Lemmy Regau Advocates, co-signatories to the account have refused to sign the necessary release forms due to outstanding legal fees owed to them by the applicants. The Court's position is that the money deposited in joint account was not the property of the advocates. It was security for both decree amount and costs. The court in the judgment made the following order :- "The amounts above to be tabulated and Decree drawn for payment under the decretal sum held by the advocates in joint account within 30 days of judgment." The court determined all issues with finality and on non-compliance with court orders, the court ought to be moved accordingly for enforcement. The instant application is held to be bad and an abuse of court process and is dismissed. For non-compliance with the judgment of the court, the respondent does not deserve costs. The application is dismissed with no order as to costs.
8. It is so Ordered.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20<sup>TH</sup> DAY OF JUNE, 2025.**

**J.W. KELI,  
JUDGE.**

In the presence of:

Court Assistant: Otieno

Applicants – in person –Tungani present.



Respondent –Impano Advocate

