



**Polyflex Industries Limited v Muthini (Appeal E155 of 2024)  
[2025] KEELRC 2209 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2209 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E155 OF 2024  
NJ ABUODHA, J  
JULY 25, 2025**

**BETWEEN**

**POLYFLEX INDUSTRIES LIMITED ..... APPELLANT**

**AND**

**MOSES MBUVI MUTHINI ..... RESPONDENT**

**RULING**

1. Before me is an application dated 24<sup>th</sup> May, 2024 seeking among others leave to file an appeal out of time. The respondent filed a preliminary objection contending that a similar application was before the trial court which declined the same on grounds that it lacked jurisdiction to grant the same. According to the respondent, the application was therefore res judicata and the only recourse open to the applicant was an appeal against the ruling of the trial court.
2. The trial court declined to grant leave to appeal out of time on grounds that it does not have jurisdiction to do so. The Court has carefully reviewed and considered provisions of section 75G of the *Civil Procedure Act* concerning time for filing appeals upon which the trial court declined jurisdiction and noted that the section states that an appeal may be admitted out of time if the appellant satisfies the court that he has good and sufficient cause for not filing the appeal in time. Admission of appeals is the function of the Court that will hear the appeal and not the court whose decision is being appealed. It is therefore the one to be persuaded that sufficient cause has been demonstrated by the applicant why the appeal was not filed within stipulated time.
3. The provision of section 75G of the *Civil Procedure Act* is comparable to Rule 4 of the Court of Appeal Rules which vests the power to extend time to file an appeal on the Court of Appeal which will ultimately hear the appeal if admitted and not the trial court whose decision is intended to be appealed. The trial court was therefore right in declining jurisdiction to extend time to appeal against its decision. The issue of res judicata does not therefore arise over a matter where the court before which it was brought had no jurisdiction. The preliminary objection is therefore rejected.



4. The present application before the court is for extension of time to file an appeal and stay of execution. Such an application seeks to invoke the discretion of the Court. The applicant must therefore present to the Court credible and sufficient reasons why the appeal was not filed within sufficient time.
5. The application for extension of time was supported by the affidavit of Kamal Z. Shah who stated among others that he was a director of the applicant and that the Magistrate's court delivered a judgment on 16<sup>th</sup> May, 2023 without notice to the applicant or either of the parties. This came to the attention of their counsel on 27<sup>th</sup> June, 2023 when they checked the state of the matter in the e-filing system. Counsel immediately requested for a copy of the judgment and obtained the same on 13<sup>th</sup> June, 2023 and noted that the applicant had largely succeeded in defending the suit save for claims on house allowance and payment for holidays worked over which the court ruled against the applicant. The applicant being aggrieved of the same instructed counsel to appeal but time for appealing had lapsed on 16<sup>th</sup> June, 2023. The applicant therefore sought extension of time to appeal.
6. According to the deponent the time for appealing lapsed because their counsel was not notified of the delivery of the judgment. The applicant filed the 1<sup>st</sup> application for extension of time before the Magistrates Court on 18<sup>th</sup> July, 2023 seeking extension of time and stay of execution. The ruling refusing the prayers sought was delivered by the trial magistrate on 26<sup>th</sup> April, 2024. The trial magistrate however granted leave to the applicant to file a similar application to this court within 30 days.
7. The CTS system instantly notifies parties of any activity on their matter. The whole idea behind the system was to speed up access to court processes and make them more efficient. According to the applicant, the judgment herein was delivered on 16<sup>th</sup> May, 2023 and that they came to learn of the same on 27<sup>th</sup> June, 2023, more than a month later. The applicant did not state whether at the conclusion of the trial the magistrate stated that the judgment would be delivered on notice. This is a practise that no longer happens in courts and is highly discouraged. All cases heard and concluded must have a judgment date. It is therefore unlikely that the trial court never allocated a judgment date hence the applicant was unaware of the date of delivery of the judgment in the matter.
8. The above coupled with the observation that the CTS system instantly notifies a party of any activity on their file, it is unbelievable that the applicant was not aware of the delivery of the judgment. Further, the application refusing extension of time to file an appeal was refused by the trial court on 26<sup>th</sup> April, 2024 and the applicant granted leave to file a similar application before this court within 30 days. The present application was filed on 27<sup>th</sup> May, 2024, on the last day of the period granted by the trial court. This shows no urgency on the part of the applicant to file an appeal if genuinely aggrieved by the decision of the trial court. By the time the applicant was seeking extension of time to file an appeal it must be presumed, the draft memorandum and record of appeal was ready save for the extension of time.
9. Extension of time to file an appeal out of time is discretionary and such discretion ought to be exercised judiciously and not in aid of a person bent on delaying the obligation to abide by the decision of a court of law as is apparent in the present circumstances.
10. The Court therefore finds the application not meriting the exercise of its discretion in favour of the applicant and hereby dismisses the same with costs.
11. It is so ordered.

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY 2025**

**DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF JULY, 2025**



**ABUODHA NELSON JORUM**  
**PRESIDING JUDGE-APPEALS DIVISION**

