



**Okeyo v Younshen Developers Co Ltd (Appeal E014 of 2024)
[2025] KEELRC 2232 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2232 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E014 OF 2024
DKN MARETE, J
JULY 23, 2025**

BETWEEN

WINSTONE ODHIAMBO OKEYO APPELLANT

AND

YOUNSHEN DEVELOPERS CO LTD RESPONDENT

RULING

1. This is an application by way of Notice of Motion dated 11th November 2024. It seeks the following orders of court;
 1. That the Appeal herein be struck out with costs to the Respondent.
 2. That the costs of this Application be borne by the Appellant.
2. The application is premised on Rule 8 of the *Employment and Labour Relations Court (Procedure) Rules 2016*, Rule 11(2) of the *Employment and Labour Relations Court (Procedure) Rules, 2024*, Section 79G of the *Civil Procedure Act*, and all enabling provisions of the law. It is supported by the affidavit of Dunstan M. Wambua, sworn on even date and opposed through a Replying Affidavit by Daniel Ouma Rakoro, sworn on 10th December 2024.
3. The bone of contention revolves around the timeliness of the appeal filed by the Appellant. The Respondent contends that the appeal, filed on 19th January 2024, was lodged 49 days after the judgment of the subordinate court delivered on 30th November 2023, contrary to the 30-day limit prescribed under Section 79G of the *Civil Procedure Act*, Chapter 21, Laws of Kenya. The Appellant, however, argues that the computation of time excludes the period between 21st December 2023 and 13th January 2024 as provided under Order 50 Rule 4 of the *Civil Procedure Rules*, thereby rendering the appeal timely.



4. The issue for determination is whether the appeal was filed within the statutory timelines and if not, whether it ought to be struck out.
5. Section 79G of the *Civil Procedure Act* aforesaid unequivocally stipulates that an appeal from a subordinate court must be filed within 30 days from the date of the decree or order appealed against. This provision is clear and mandatory, leaving no room for ambiguity or negotiation. The judgment in question was delivered on 30th November 2023 while the appeal ought to have been filed by 30th December, 2023. The Appellant filed the appeal on 19th January 2024, which *prima facie* appears out of time.
6. The Appellant's reliance on Order 50 Rule 4 of the *Civil Procedure Rules* is misplaced. This rule provides for the exclusion of the period between 21st December and 13th January in the computation of time for filing pleadings or performing acts under the Rules or court orders. However, the time limit for filing an appeal is prescribed by Section 79G of the *Civil Procedure Act*, not the Rules.
7. The Court of Appeal in the authorities of *Gabriel Osimbo v Chrispinus Mandare* [2015] eKLR and the High Court in *Cook 'N' Lite Limited v Silvester Mutia Jonathan* [2015] eKLR held that Order 50 Rule 4 does not apply to time limits set by the *Civil Procedure Act*. The Act is silent on the exclusion of court vacation periods and subsidiary legislation cannot override the express provisions of the parent statute.
8. The Appellant's argument that the appeal was filed within 26 days, excluding the vacation period, is untenable. The computation of time under Section 79G is strict and does not accommodate such exclusions unless expressly provided for. The authorities cited by the Appellant, including *Francis Likhabila v Barclays Bank of Kenya* [2020] eKLR and *Slok Construction Limited v Erick Odhiambo Odongo* [2022] eKLR are distinguishable as they pertain to the interpretation of time computation under specific contexts not applicable here.
9. In light of the foregoing, I find that the appeal was filed out of time and without leave of the court. The Respondent's application is merited, and the appeal is hereby struck out with orders that each party bears their costs of the application.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Miss Gataghai instruction by Rakoro & Company Advocates for the Respondent/Applicant.

Mr. Wambua instructed by J.M Kimathi & Partners Advocates for the Respondent

