



Onyango v Flashcom Security Limited (Miscellaneous Application E328 of 2024) [2025] KEELRC 1990 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 1990 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E328 OF 2024**

**AK NZEI, J
JULY 4, 2025**

BETWEEN

CHARLES OUMA ONYANGO APPLICANT

AND

FLASHCOM SECURITY LIMITED RESPONDENT

RULING

1. The application before me is the Applicant’s Notice of Motion dated 12th November, 2024, expressed to be brought under Order 50 Rule 6 of the Civil Procedure Rules 2010. The Applicant seeks Orders:-
 - a. That leave be granted to the Applicant to file [an] appeal out of time.
 - b. That the annexed memorandum of appeal be deemed [as] duly filed upon payment of the requisite Court fees.
 - c. Any other or better relief [that] the Court may deem fit to grant.
 - d. That costs of the application be provided for.
2. The application sets out on its face the grounds upon which it is based, which (grounds) are amplified in the supporting affidavit of Daniel O. Rakoro Advocate sworn on 12th November, 2024. It is deponed in the said affidavit:-
 - a. that the Applicant was the Claimant in Nairobi Chief Magistrate’s Court Cause No. 431 of 2022, whereon Judgment was delivered on 26th September, 2024.
 - b. that the Applicant immediately instructed his Advocates on record to apply for a copy of the Judgment; to advise him (the Applicant) and to take instructions on the same.



- c. that although the Applicant's Advocates wrote to the trial Court's Executive Officer on 27th September, 2024 requesting for a typed copy of the Judgment, the Judgment was not availed to them until 7th December, 2024.
 - d. that delay, in filing an appeal was occasioned by the Court's delay in availing a copy of the Judgment to the Applicant.
 - e. that the Applicant has since requested for copies of [the trial] Court's proceedings.
 - f. that the intended appeal has high chances of success; and the Respondent does not stand to suffer any loss if the application is allowed.
3. Documents annexed to the said supporting affidavit are copies of the trial Court's Judgment delivered on 26th September, 2024, the Applicant's Advocate's letter dated 27th September, 2024 requesting the trial Court for a copy of the Judgment and the trial Court's payment receipt (No. RA-0274259) thereon dated 7th November, 2024, a letter dated 11th November, 2024 requesting for certified copies of the trial Court's proceedings and a draft memorandum of appeal.
4. The application is opposed by the Respondent vide a replying affidavit of Andrew Mwasi Advocate sworn on 3rd February, 2025. It is deponed in the said replying affidavit:-
- a. that the application is bad in law and is based on material non-representation of facts relating to directions issued by the Court on 26th September, 2024 (the Judgment date).
 - b. that upon delivery of the trial Court's Judgment on 26th September, 2024, Counsel for both parties asked to be furnished with typed copies of the Judgment, upon which the trial Court directed that the Judgment would be uploaded onto the Court's Case Tracking System (CTS) on the same date.
 - c. that a typed copy of the Judgment was availed on the CTS on the same dated (26th September, 2024) with a time stamp of 17.44 Hours.
 - d. that the Applicant's request for a copy of the Judgment (as exhibited by the Applicant herein) was filed in Court on 7th November, 2024 (Court Receipt No. RA-0274259), more than 40 days after delivery of the trial Court's Judgment and after the Judgment had been availed.
 - e. that the Applicant's averment that he requested for a copy of the Judgment on 27th September, 2024 is misleading; and that the allegation that delay in filing a memorandum of appeal was occasioned by the Court is a misrepresentation of facts.
 - f. that there is no proof of filing of a request for the Court's proceedings as alleged by the Applicant, and that the allegation is an attempt to mislead the Court.
 - g. that the Respondent stands to be prejudiced if the application herein is allowed; as the intended appeal has no chance of succeeding.
 - h. that the application herein is an abuse of this Court's process.
5. A copy of the trial Court's Judgment delivered on 26th September, 2024 is annexed to the Respondent's replying affidavit.
6. Written submissions were filed on behalf of both parties herein for and against the application pursuant to the Court's directions in that regard.



7. Having considered the application and the Respondent's response thereto, I have noted some three facts which cannot escape this Court's attention. First and foremost, it is clear from the last page of the trial Court's Judgment delivered on 26th September, 2024 (page 6/6) that the said Judgment, duly dated and delivered, was uploaded onto the Court's Case Tracking System (CTS) on the said date of its delivery (26th September, 2024) at 17:44:52 Hours. The Respondent's averment that the Applicant and/or his Counsel was present when the said Judgment was delivered and when the trial Court directed that the Judgment would be uploaded on the Court's CTS on the said date of its delivery has not been controverted by the Applicant, as no further affidavit stating otherwise was filed.
8. Secondly, the Applicant's letter shown to be dated 27th September, 2024 purportedly requesting for a copy of the Judgment was not filed in Court and/or presented to the trial Court until 7th November, 2024 when the applicable Court fees of Kshs.1,000/= is shown to have been paid vide Court Receipt No. RA-0274259. This was approximately forty one (41) days from the date of the said letter, and from the date of delivery of the trial Court's Judgment. The said letter is not shown to have been presented to the trial Court earlier than 7th November, 2024. No explanation has been given for the aforesaid delay in presenting the said letter to the trial Court. Was the letter really written on 27th September, 2024 as the Applicant purports to show."
9. Thirdly, the Applicant's letter to the trial Court dated 11th November, 2024 "requesting for a certified copy of proceedings" is not shown to have been filed in Court before filing of the application herein, and the Applicant is not shown to have paid for the proceedings requested for at any given time. Further, the said letter is shown to have been written over forty two (42) days from the date of delivery of the trial Court's Judgment. No explanation for this delay has been given by the Applicant; and the Applicant has not filed a copy of the trial Court's proceedings in this Court. Having not seen and perused the trial Court's proceedings, this Court cannot make a finding on whether or not the intended appeal is arguable or frivolous. A party seeking leave to file an appeal out of time must, as a matter of necessity, include in his application copies of the trial Court's proceedings and the impugned Judgment/decision.
10. What I find extremely troubling is the Applicant's attempt to blame the trial Court for his failure to file an appeal in time. This blame cannot, in my view, attach to the trial Court, in view of all the foregoing. The culture of blaming the Courts even where parties to litigation have for no reason failed to act within prescribed time or have failed to proof their case to the required standard must come to an end.
11. Rule 18 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:-

" The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal."
12. Circumstances of the case herein, which I have deliberately set out herein in detail, do not justify extension of time by this Court for filing of an appeal. The Applicant has not satisfied the Court that he had good and sufficient cause for not filing an appeal in time, and has thus not explained the delay involved. As stated in *First American Bank of Kenya Limited – vs – Gulab P. Shah and 2 others* [2002] 1 EA 65, an applicant seeking extension of time must give an explanation for the delay. Further, the Court ought to consider merits of the contemplated action, whether the matter is arguable or deserving of a day in Court, or whether it is a frivolous one which would only result in delay of the course of justice. The Applicant's application does not meet this threshold; and this Court cannot exercise its discretion in favour of the Applicant.
13. The Notice of Motion dated 12th November, 2024 is devoid of merit, and is hereby dismissed.



14. Each party will bear its own costs of the application.

15. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY 2025.

AGNES KITIKU NZEI.

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Kataghai for the Applicant

Mr. Mwasi for the Respondent

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