



**Naivas Limited v Muthoka (Appeal E011 of 2025)
[2025] KEELRC 2397 (KLR) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2397 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E011 OF 2025**

J RIKA, J

AUGUST 29, 2025

BETWEEN

NAIVAS LIMITED INTENDED APPELLANT

AND

PETER KITALI MUTHOKA RESPONDENT

RULING

1. The Intended Appellant filed an application dated 6th March 2025, seeking two orders: that execution of judgment/decree of the Trial Court in Nakuru MCELRC No. E234 of 2023, between the parties herein is stayed; and, the Intended Appellant is granted leave to appeal out of time.
2. The application is founded on the affidavit of Counsel for the Intended Appellant Lydiah Kinyua. It is not clear from the affidavit, when it was sworn.
3. Counsel explains that after the hearing at the Trial Court closed, judgment was reserved for delivery on various dates. It was not delivered as scheduled, but instead, parties were advised that it would be delivered on notice.
4. When it was finally delivered, the Intended Appellant did not have notice. Counsel only learnt of delivery from the CTS. Delivery was on 24th January 2025. 30-day period allowed under the [E&LRC \[Procedure\] Rules, 2024](#), to lodge an appeal, lapsed on 24th February 2025.
5. The Respondent did not notify the Intended Appellant, of entry of the judgment.
6. The Intended Appellant states that due to non-notification, it was delayed in filing the appeal and the application.
7. It has filed a memorandum of appeal dated 6th March 2025, with arguable grounds. Further, it has deposited the decretal sum in a bank account, in the names of the respective Counsel.



8. The Respondent opposes the application, through his affidavit sworn on 10th April 2025.
9. He submits that his Counsel was vigilant, following up on delivery of the Trial Court's judgment, while the Intended Appellant and its Counsel were indolent. He is not to be blamed, for their indolence.
10. The Respondent states that the Counsel for the Intended Appellant was served with a request for decree and certificate of costs, on 12th February 2025. It is not true that the Intended Appellant learnt of judgment in March 2025.
11. The Intended Appellant applied for typed proceedings on 5th February 2025.
12. The Respondent urges the Court to dismiss the application.
13. Parties agreed to have the application considered and determined, on the strength of their affidavits and submissions on record. The application was last mentioned on 25th June 2025, when parties confirmed filing and exchange of their submissions.

The Court Finds: -

14. The letter dated 12th February 2025, authored by the Respondent's Counsel, addressed to the Trial Court, asking to be furnished with decree and certificate of costs, is not indicated to have been copied to the Intended Appellant.
15. The letter authored by the Intended Appellant's Counsel, addressed to the Trial Court, dated 5th February 2025 does not mention a copy of the judgment. The Intended Appellant applied for copy of the proceedings. It is not indicated that proceedings were being sought, with an appeal in mind. Parties ordinarily apply for proceedings at different turns in the proceedings, for various reasons.
16. The two letters do not conclusively show, that the Intended Appellant was aware about delivery of the judgment, as early as 5th February 2025.
17. The Intended Appellant has shown that judgment was to be delivered on notice. It did not receive notice. It did not receive notice of entry of judgment either.
18. Delay in filing of the appeal has been explained adequately. The draft memorandum of appeal, discloses an arguable appeal. The decretal sum has been deposited in a bank account held in the names of the respective Counsel.

It is ordered: -

- a. Execution of judgment/ decree of the Trial Court is stayed, pending hearing and determination of the appeal.
- b. Leave is granted to the Intended Appellant to file its appeal within 60 days of delivery of this ruling.
- c. No order on the costs of the application.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, PURSUANT TO RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 29TH DAY OF AUGUST 2025.

JAMES RIKA

JUDGE

