



**Washe v Kilifi Plantation Limited (Miscellaneous Application
E003 of 2024) [2024] KEELRC 1427 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1427 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
MISCELLANEOUS APPLICATION E003 OF 2024**

**M MBARŪ, J
APRIL 25, 2024**

BETWEEN

ALEX BARAWA WASHE APPLICANT

AND

KILIFI PLANTATION LIMITED RESPONDENT

RULING

1. The applicant filed an application dated 13 March 2024 under the provisions of Section 79G of the Civil Procedure Act seeking orders that;

This court be pleased to grant leave to the applicant to file a Memorandum of Appeal out of time against the lower court' ruling issued on 7 November 2023.
2. The applicant filed his supporting Affidavit on the grounds that the applicant filed suit against the respondent for compensation after work injuries but the trial court on its motion struck out the suit on 25 March 2021 citing lack of jurisdiction upon the Supreme Court Judgment touching on Work Injury Benefits Act and claims thereof.
3. The applicant filed an application dated 12 May 2023 seeking to set aside the orders dismissing the suit according to Practice Directions that were issued thereafter but in a ruling delivered on 7 November 2023 the trial court held it was ex officio and hence dismissed the application.
4. The applicant is dissatisfied with the ruling and orders of the trial court and seeks to file an appeal. However, he requested typed proceedings on 14 November 2023 but these have not been issued to allow him to file a Memorandum of Appeal and to prepare the Record of Appeal. Despite making follow-ups and seeking the indulgence of the court officers, these have not been provided hence the delay in not filing an appeal in time.
5. The respondent was served but failed to file any response to the application.



Determination

6. The applicant is seeking to appeal against the ruling delivered on 7 November 2023 out of time. The reason for not filing the appeal in time is that immediately upon the ruling, there was an application for certified copies of proceedings but these were not provided in time.
7. Under Section 17 of the *Employment and Labour Relations Court Act*, 2011 read together with Rule 8 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* an appeal should be lodged within 30 days from the date of the order, ruling, judgment sought as the subject of the appeal. Where a party is unable to file such an appeal in good time, under Section 79G of the *Civil Procedure Act*, upon good cause, the court is allowed to extend the time to file an appeal.
8. Section 79G of the *Civil Procedure Act*, stipulates that;

Every appeal from a subordinate court to the High Court shall be filed within a period of 30 days from the date of the decree or order appealed against excluding from such period anytime which the lower court may certify as having been requisite for preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal.
9. The provisions of Section 79G of the *Civil Procedure Act* are clear that the timelines for appealing against the decision of a subordinate court are within 30 days from the date of the decree or the order being appealed against. Under the law, there must be a valid reason for the delay.
10. It is plain therefore that the Court, when considering an application such as the instant one, has unfettered discretion; and therefore need only concern itself with whether justifiable cause has been shown to warrant such exercise of discretion. For this reason, the principles laid down by the Supreme Court in *Nicholas Kiptoo Korir arap Salat v IEBC & 7 others* [2014] eKLR that;
11. (T)he underlying principles a court should consider in exercise of such discretion include:
 1. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. whether there will be any prejudice suffered by the Respondent if the extension is granted;
 6. Whether the application has been brought without undue delay.
 7.”
12. The applicant has explained the delay in not filing the appeal in time arose out of the delays by the trial court in providing the required court proceedings. This cannot be blamed on the applicant and the delay from 7 November 2023 to 13 March 2024 although over 3 months is excusable in the circumstances.



13. The application dated 13 March 2024 is hereby allowed, time to file an appeal is enlarged by 14 days only. No orders on costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF APRIL 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Nasra

..... and

