



REPUBLIC OF KENYA



**Patmol Security Services Ltd v Wambulwa (Miscellaneous Application
E167 of 2024) [2024] KEELRC 13367 (KLR) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13367 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E167 OF 2024**

**JW KELI, J
NOVEMBER 25, 2024**

BETWEEN

PATMOL SECURITY SERVICES LTD APPLICANT

AND

CATHERINE NANJEKHO WAMBULWA RESPONDENT

RULING

1. The applicant vide Notice of Motion application dated 7th June 2024 brought under Order 22 Rule 22, Order 42 Rule 6, Order 51 rule 1 of the Civil Procedure Rules Section 79G of the [Civil Procedure Act](#) sought the following orders:-
 1. spent
 2. Spent
 3. That the Applicant be and is hereby granted leave to appeal out of time against the judgment delivered on 24th November 2023 in Chief Magistrates Court at Milimani, Chief Magistrates Employment and Labour Case No. E1588 of 2022-Catherine Nanjekho Wambulwa vs Patmol Security Services Limited by the Honourable Principal Magistrate P.K. Rotich.
 4. That there be a Stay of Execution of the Judgment and Decree of the Hon.P.K Rotich delivered on 24th November 2023 in the Chief Magistrates Court at Milimani, Chief Magistrates Employment and Labour Case No.E1588 of 2022-Catherine Nanjekho Wambulwa vs Patmol Security Services Limited pending the hearing and determination of the appeal.
 5. That the cost of this application be provided for.
2. Grounds of the application



- a. The Appellant has preferred to appeal against the entire judgment delivered by the Trial Court in their absence.
 - b. That the judgment of the Trial Court was delivered on 24th November 2023 and the period the applicant was to prefer appeal lapse don the 24th December 2023.
 - c. The Applicant was served with proclamation notices by High Class Auctioneers on 3rd June 2024 in purported execution against the judgment of the Trial Court delivered on 24th November 2023 by Hon. P.K. Rotich SPM.
 - d. That the judgment of the Trial Court was delivered on 24th November 2023 in the absence of the Respondent and without notice.
 - e. That the Trial Court had deferred the judgment on three occasions which was on 11th September 2023, 17th October 2023 and 30th October 2023 and whereby the Court on 30th October 2023 indicated that the judgment would be delivered on notice and the same can be confirmed from the lower court record.
 - f. That the Trial Court did not issue any notice on the delivery of the judgment and the file was unfortunately in the Court's chambers for all that period and therefore making attempts at following up on the terms of the judgment impossible.
 - g. That the judgment of the Court was only availed on the 6th June 2024, when the Court file was availed for purposes of typing the judgment.
 - h. That the Applicant is keen on prosecuting the appeal as the judgment of the Trial Court was erroneous on principle and the amounts awarded to the Respondent for Kshs.524,880/-were not supported by any evidence.
 - i. That the Appellant is willing to abide by reasonable directions of this Court on security to enable the appeal be heard on merit.
 - j. That the Applicant is apprehensive that if the Respondent proceeds to execute the judgment of the Trial Court, the application and the intended appeal herein will be rendered nugatory.
 - k. That it is in the interest of justice that the application to file the appeal out of time and for stay of execution of the Trial Court judgment be allowed to enable the Appellant prosecute the appeal on merit which has very high chances of success.
 1. That the Respondent will not suffer any prejudice if the application is allowed.
 - m. That it is in the interest of justice that the application to file the appeal out of time be allowed to enable the Appellant prosecute the appeal on merit.
3. The applicant vide Nimorod Marete swore supporting affidavit dated 7th June 2023 raising same grounds in the application and annexed as NM1 a copy of proclamation notices and warrants of attachment, as NM2 a copy of the judgment, as NM3 draft memorandum of appeal, NM4 copies of the correspondences of the trial court seeking to access the court file to extract the order, and as NM5 copy of the decree which he said was extracted by the respondent illegally without service of a draft decree and payment of further court fees.
 4. On the 11th June 2024 Justice Ocharo Kebira issued a temporary order of stay of execution pending the hearing and determination of the application.



5. The Respondent opposed the application vide her replying affidavit of 26th July 2024 stating that the delay of 7 months was not justified. That the letter dated 4th December 2023 affirmed the applicants were aware of delivery of the judgment. That it was not true the file was kept in chambers up to 5th June 2024 seeing the warrants of attachment were issued on 30th May 2024. Besides the letter of 4th December 2023 and 15th March 2024, there was no evidence of actual steps taken to peruse the court file. The respondent contends the appeal has no chance of success as they allege she voluntarily resigned yet she underwent frustrations which were articulated in the resignation letter. She relied on the findings in the judgment
6. The application was canvassed by way of written submission. The respondent told the court they wished to rely on the replying affidavit. The applicant filed submissions dated 4th October 2024.

Decision

Whether the appeal was merited.

7. Rule 12 of the Court Rules of 2024 provides for the time of filing appeal to this court from the Magistrates court as follows:- “(2) Where an appeal is from a magistrate’s court or where no period of appeal is specified in the written law referred to in sub-rule

(1), the appeal shall be filed within thirty days from the date the decision is delivered.”

8. The applicant seeks to file leave to file an appeal out of time against judgment of Hon. P.K Rotich in CMC Milimani CMELC No, e1588 of 2022 in favour of the respondent. The judgment was delivered on the 24th of November 2023. The application was dated 7th June 2024 hence out of the 30 days. Rule 18 of the Employment and Labour Relations Court (Procedure) 2024 provides for extension of time as follows:-

“18. The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.”

9. On the criteria for exercise of discretion of the court to extend time for filing an appeal the applicant relied on the decision of the Supreme Court in Application No. 16 of 2014 Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] e KLR where the Court delved into the principles to be had to on the question of extension of time:-

“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a 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 on 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 respondents if the extension is granted;



6. Whether the application has been brought without undue delay; and;
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.” Page 16 of 18
10. Applying the foregoing decision and the provisions of Rule 18 of the Court Rules of 2024, the court was satisfied that the delay was explained and related to the lack of notice of delivery of the decision, delay in releasing the judgment and proceedings. The court finds that it is in the interest of justice to afford a party to access the appellate court where the delay is justified like in the instant case. The court finds the memorandum of appeal raises the arguable point of the respondent having voluntarily resigned after 1 year and one month of desertion, as an example, and after all dues had been paid.
11. On the issue of stay of execution, the court holds that under Order 42 Rule 6 the applicant ought to provide security for the performance of decree. The applicant did not address the court on this issue. The court in order to preserve the subject matter of the appeal and having perused the application and annexures, grants an Order of stay of execution pending the determination of the intended appeal on condition of deposit of the decretal amount in within 15 days of this Order.
12. In conclusion the application dated 7th June 2024 is allowed in the following terms:-
 - a. The applicant is granted leave to file the appeal out of time. The memorandum of appeal to be filed and served within 14 days of this order.
 - b. An Order of stay of execution is issued pending the hearing and determination of the appeal on condition of deposit of the decretal amount within 15 days of this order failing which the order stands vacated.
 - c. Mention on the 16th December 2024 to confirm compliance and further directions.
 - d. No order as to costs.

It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25th DAY OF NOVEMBER, 2024.

**JEMIMAH KELI,
JUDGE.**

In The Presence Of:

Court Assistant: Caleb

Applicant: - Njagi

Respondent: absent

