



**Moi Teaching and Referral Hospital v Njuguna (Employment and Labour Relations Appeal E023 of 2024) [2024] KEELRC 2838 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2838 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E023 OF 2024**

**MA ONYANGO, J  
NOVEMBER 14, 2024**

**BETWEEN**  
**MOI TEACHING AND REFERRAL HOSPITAL ..... APPELLANT**  
**AND**  
**ROBINSON KAMAU NJUGUNA ..... RESPONDENT**

**RULING**

1. The Memorandum of Appeal in this appeal was lodged on 24<sup>th</sup> July 2024. The judgment appealed against was rendered in Eldoret CMELRC No. 128 of 2022. On 18<sup>th</sup> September 2024, Counsel for the Respondent brought a Notice of Preliminary Objection dated 16<sup>th</sup> September 2024 on the ground that the Memorandum of Appeal is fatally defective since it was filed out of the 30 days' statutory period within which to lodge an appeal, and is thus time barred.
2. The Preliminary Objection was canvassed through written submissions. The Respondent's submissions are dated 27<sup>th</sup> September 2024 and the Appellants submissions are dated 4<sup>th</sup> October 2024. In his submissions, the Respondent argued that the Appellant's Memorandum of Appeal was filed on 22<sup>nd</sup> July 2024 yet the Judgment in the trial court was rendered on the 21<sup>st</sup> June 2024. According to the Respondent, the statutory period for filing an appeal lapsed on 21<sup>st</sup> July 2024 at midnight and that any appeal filed out of this stipulated period is time barred. In support of this position, the Respondent placed reliance on the case of *Sohanlaldurgadass Rajput & another v Divisional Integrated Development Programmes Co. Limited* (2021)eKLR.
3. The other issue raised by the Respondent is the Appellant's failure to make an application to extend the statutory timelines. In this regard, the Respondent has submitted that filing the same would have denoted goodwill from the Appellant in rectifying the anomalies created by filing the appeal out of time.



4. The Respondent has therefore submitted that the Appellant’s Memorandum of Appeal is fatally defective having been filed out of the stipulated time. He sought for it to be struck out with costs.
5. On its part, the Appellant in response denied that it delayed in filing the instant Memorandum of Appeal. According to the Appellant, the Judiciary e-filing system experienced problems from 17<sup>th</sup> July 2024 and the 21<sup>st</sup> July 2024 which was the expiry of the period for filing the appeal fell on a Sunday and as such, the one-day delay is excusable. To buttress this point, the Appellant cited the case in *Letshego Kenya Limited v Timothy Kaimenyi Mungathia (2021) eKLR*.

### **Determination**

6. Rule 12 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides:
  1. Where a written law provides for an appeal to the Court, an appellant shall file a memorandum of appeal with the Court within the time specified under that written law.
  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.
7. Further, section 79G of the *Civil Procedure Act* provides: “79G. Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the 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 in time.”
8. The Appellant has attributed the one-day delay in filing the Memorandum of Appeal to problems with the Judiciary e-filing portal from 17<sup>th</sup> July 2024 and particularly. The Appellant has further submitted that the 21<sup>st</sup> day of July 2024 which was the expiry of the statutory period was falling on a Sunday.
9. Section 57 of the *Interpretation and General provisions Act* provides as follows:
  57. In computing time for the purposes of a written law, unless the contrary intention appears –
    - a. a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
    - b. if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;
    - c. where an act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next where no time prescribed.
    - d. where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.
10. From the foregoing it is evident that the appeal was timeously filed as it was filed on the first working day after the lapse of the 30-day period for filing appeal which fell on a Sunday.
11. Consequently, the Preliminary objection is dismissed. There shall be no orders as to costs.



**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024**

**MAUREEN ONYANGO**

**JUDGE**

