



**Moriema Cottages Limited v Manjewa (Appeal E016 of 2023)
[2024] KEELRC 2722 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2722 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
APPEAL E016 OF 2023
M MBARŪ, J
NOVEMBER 7, 2024**

BETWEEN

MORIEMA COTTAGES LIMITED APPELLANT

AND

OBADIAH ANGUS NYANJE MANJEW A RESPONDENT

RULING

1. The appellant filed an application dated 5 July 2024 under the provisions of Section 7 of the [Appellate Jurisdiction Act](#), Order 9 Rule 9 of the Civil Procedure Rules seeking orders;
 1. Leave be granted to the appellant herein to file a Notice of Change of Advocates to enable the firm of Richard O. & Co Advocates to come on board in place of Bomanin Advocates & Associates.
 2. The appellant/applicant herein be allowed to file and serve the Notice of Appeal against the judgment delivered on 23 May 2024.
 3. Cost of the application be provided for.
2. The application is supported by the affidavit of Morris Mwambui Kupalia, a director of the appellant and on the grounds that the judgment herein was delivered on 23 May 2024. The appellant had instructed the firm of Bamomin Advocates & Associates to appeal against the judgment but discovered later that this had not been filed within 14 days of the judgment. The appellant wishes to be represented by another firm of advocates post the judgment.
3. In his affidavit, Kupalia aver that under Section 7 of the Appellant Jurisdiction Act, leave is required to file a Notice of Appeal out of time. Such time lapsed on 5 June 2024, and it is only fair that time be extended to allow the appellant to file an appeal. There will be prejudice against the respondent if the orders sought are allowed.



4. In reply, the respondent filed his Replying Affidavit and averred that there is no proof that his advocates were instructed to file a Notice of Appeal in time. The appellant's director, being an Advocate, is aware of the law and should have followed up on his case.
5. The appellant has not filed a draft memorandum of Appeal or Notice of Appeal, and no security has been offered to secure the judgment herein. The application aims to deny the respondent the fruits of his judgment and should be dismissed with costs.
6. Parties filed written skeleton submissions, which were analysed.

Determination

7. The judgment herein was delivered on 23 May 2024. Upon the judgment, the parties had the right to appeal to the Court of Appeal, which is regulated by its rules of procedure.
8. About the change of advocates, Order 9 Rule 9 of the Civil Procedure Rules requires that;
9. When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.
10. In this case, there is no notice to the advocates acting for the appellant or the consent. None is attached to the Supporting Affidavit of Kupalia, the director of the appellant. The continued attendance by other advocates outside these provisions is irregular.
11. The court is not entitled to simply ignore a procedural misstep. The rules of procedure are meant to regulate the orderly administration of justice and not to assist the indolent as held by the Court of Appeal in *Hunker Trading Company Limited v Elf Oil Kenya Limited* Civil Application No. Nai. 6 of 2010.
12. Whether to allow for more time to file the Notice of Appeal or not without a proper foundation on the attending advocates, such cannot suffice. It would be to sanitise a procedure already flawed. The lapse in filing the draft notice is fatal.
13. Accordingly, the application dated 5 July 2024 is hereby dismissed. Costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 7TH DAY OF NOVEMBER 2024.

M. MBARŪ

JUDGE

