



**Broadways Logistic Limited v Abdulkadir (Appeal E057 of 2024)
[2024] KEELRC 13376 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13376 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E057 OF 2024
AK NZEI, J
DECEMBER 6, 2024**

BETWEEN

BROADWAYS LOGISTIC LIMITED APPELLANT

AND

ZUBERI HABIB ABDULKADIR RESPONDENT

RULING

1. The Application before me is the “Appellant’s” Notice of Motion dated 27th March, 2024 and shown to have been filed herein on 4th April, 2024. I say “Appellant’s” because there is no appeal filed as yet. The application ought to have been registered as a Miscellaneous Application/Cause, but not as an appeal. I will, therefore, refer to the “Appellant” (Broadways Logistics Limited) as simply “the Applicant”.
2. The Applicant seeks the following Orders in the said application:-
 - a. That an order be granted extending the time for filing an appeal against the Judgement of the Learned Hon. Nabibya, SRM delivered on 27th November, 2023 in Mombasa CMC ELR Case No. E184 of 2021 (*Zuberi Habib Abdulkadir v Broadways Logistics Limited*).
 - b. That the Memorandum of Appeal dated 27th March, 2024 filed herein be deemed as duly filed within time and the same be deemed to be properly on record.
 - c. Any further orders and/or directions be given as this Honourable Court may deem just and expedient.
 - d. That costs of the application be provided for.
3. The application, expressed to be brought under Sections 1A, 1B, 3A, 63(e) and 79G of the [Civil Procedure Act](#), is based on the supporting affidavit of Jaffer Mohamed sworn on 4th April, 2024. It is deponed in the said supporting affidavit that the Applicant’s failure to institute an appeal within the prescribed time was occasioned by inaction by the Applicant’s former Advocates, which the said



- Advocates blamed on oversight on their part. That the Applicant is keen on exercising its right of appeal, and that the intended appeal is arguable.
4. A draft memorandum of appeal is annexed to the Applicant's said supporting affidavit, and in my view, the intended appeal is not frivolous. I have perused the impugned Judgment as well.
 5. The Respondent did not file response to the application, despite having been severally allowed time by the Court to do so. The application stands, and stood unopposed as on 19th September, 2024 when the Court reserved a date for Ruling.
 6. It is worthy noting here that proceedings in this Court are guided and/or regulated by this Court's Rules of Procedure. As at the time of filing the present application, the Court's Rules in operation were the *Employment and Labour Relations Court (Procedure) Rules* 2016 (now repealed). Rule 8(1) & (2) of the said Rules provided as follows:-
 - “(1) Where any written law provides for an appeal to the Court, an appellant shall file a memorandum of appeal with the Court within the time specified for that appeal under the written law.
 - (2) Where no period of appeal is specified in the written law under paragraph (1), an appeal shall be filed within thirty days from the date the decision was delivered.”
 7. Rule 12 of the *Employment and Labour Relations Court (Procedure) Rules*, 2024 provides as follows:-
 - “(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.”
 8. Section 79G of the *Civil Procedure Act*, which is a substantive written law, provides that every appeal from the 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 such period of time which the lower court may certify as having been requisite for the preparation and delivery to the applicant of a copy of the decree or order. By dint of Article 162(2)(a) of the *Constitution* of Kenya 2010, this Court is a Court of equal status with the High Court. Appeals to this Court from the Subordinate Courts must, therefore, be filed within thirty days from the date of the decree or order appealed against.
 9. The proviso to Section 79G of the *Civil Procedure Act* states as follows:-

“Provided that 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.”
 10. The import of the foregoing provisions of the law is that this Court is endowed with Jurisdiction to extend time for filing an appeal against a decree or order of a Subordinate Court. This Court's



rules of procedure are not silent on the issue of extension of time for filing an appeal. Rule 18 of the *Employment and Labour Relations Court (Procedure) Rules, 2024* provides as follows:-

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

11. The wording of the aforesaid provisions of the statute and this Court’s rules of procedure is clear on the fact that the law empowers this Court to extend time for filing an appeal, but not to validate an appeal that has been filed out of time and without the Court’s leave. Filing of an appeal out of time without first seeking the Court’s leave to do so is an illegality, and the Court cannot be called upon to legalise an illegality.

12. The Supreme Court of Kenya stated as follows in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR:-

“What we hear the applicant telling the Court is that he is acknowledging having filed a “document” he calls “an appeal” out of time without leave of the Court. Pursuant to Rule 33(1) of the *Court’s Rules*, it is mandatory that an appeal can only be filed within 30 days of filing the notice of appeal. Under Rule 53 of the *Court’s Rules*, this Court can indeed extend time. However, it cannot be gainsaid that where the law provides for the time within which something ought to be done, if that time lapses, one needs to first seek extension of that time before he can proceed to do that which the law requires. By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and to recognize such an appeal is tantamount to moving the Court to remedy an illegality. This, the Court cannot do. To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave. Such a filing renders the “document” so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court.”

13. Having said all the foregoing and considered the submissions filed, and being satisfied that the Applicant has demonstrated good and sufficient cause for not filing the intended appeal in time; I allow the Notice of Motion dated 27th March, 2024 in the following terms:-

- a. The Applicant herein is hereby granted leave to appeal against the Judgment of Hon. Nabibya (SRM) delivered on 27th November, 2023 in Mombasa CMC ELR Case No. 184 of 2021 (*Zuberi Habib Abdulkadir v Broadways Logistics Limited*) out of time.
- b. A memorandum of appeal shall be filed, vide a separate appeal file, and shall be served within thirty days of this Ruling.
- c. Any document filed herein and purported to be a memorandum of appeal is hereby struck off, and the court file herein is ordered closed upon extraction and sealing of the order(s) contained in this Ruling.
- d. Costs of the application shall be in the appeal.

14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER 2024

AGNES KITIKU NZEI

JUDGE



Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

..... Claimant

..... Respondent

