



**Maroa v G4S Kenya Limited (Appeal E129 of 2022)
[2023] KEELRC 901 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 901 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E129 OF 2022
MN NDUMA, J
APRIL 13, 2023**

BETWEEN

MWITA MAKENGE MAROA APPLICANT

AND

G4S KENYA LIMITED RESPONDENT

RULING

1. By Notice of Motion dated July 28, 2022, the applicant seeks an Order in the following terms:-
 1. Spent
 2. That this Honourable Court be pleased to extend time within which the Appellant/Applicant ought to have filed and served the Memorandum of Appeal against the whole judgment and Decree delivered by Hon DM Kivuti on March 28, 2022 in Milimani Commercial Chief Magistrate’s Court at Nairobi in CMEL No 12 of 2020.
 3. That this Honourable Court to order that the Memorandum of appeal dated July 28, 2022 filed herewith be deemed as duly filed and served thus properly on record.
 4. That the cost of this Application be provided for.
2. The application is premised on grounds set out on the face of the notice of motion and in the supporting affidavit of the applicant to wit that judgment was delivered by Hon DM Kivuti on March 28, 2022 dismissing the claimant’s claim.
3. The appeal was not filed on time due to delay in obtaining certified copies of proceedings and the judgment. That the appellant obtained certified copy of the judgment on July 25, 2022. That the



applicant is aggrieved by the judgment of the Court. That the intended appeal has chances of success. That the reason for delay is excusable. That it is in the interest of justice and fairness that the application be allowed.

4. The application is opposed vide grounds of opposition dated August 11, 2022 to wit that Rule 8(2) of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#) provide that an appeal be filed within 30 days from the date of the decision.
5. That Rule 8(4) provides that where copies of proceedings are not filed with the Memorandum of Appeal, the appellant is to file them as soon as possible and within a reasonable time.
6. That judgment was delivered by Hon Kivuti on March 28, 2022 while the learned magistrate was still stationed at Milimani Commercial Courts. That it is not true that delay to file the appeal is attributable to the transfer of the Hon. Magistrate.
7. That delay of ninety (90) days in filing the appeal is unreasonable and inordinate.
8. That on the authority of [James Mwangi Kibuchi and Another v Gikanda Farmers Co-operative Society Limited](#) [2017] eKLR, [Joseph Michael Mwenja v Woolmatt Limited](#) [2019] eKLR and [Chase Bank \(K\) Limited v Connix Industrial Limited](#) [2021] eKLR, no sufficient cause has been shown by the applicant for the delay to file the appeal within the prescribed period since filing of an appeal is not conditional on the release of typed proceedings.
9. That the application lacks merit and it be dismissed with costs.

Determination

10. The Supreme Court in [County Executive of Kisumu v County Government of Kisumu and 8 Others](#) [2017] eKLR stated that extension of time to appeal is an equitable remedy that is granted at the Court's discretion.
11. An appeal in commenced by filing a Memorandum of Appeal before this Court.
12. The applicant has attached to this application a memorandum of appeal dated July 28, 2022 and filed on instant date.
13. The memorandum of Appeal was filed four (4) months from the date the judgment of the trial Court was delivered on March 28, 2022. The applicant has not offered any proper reasons as to why the Memorandum of Appeal was not filed within 30 days as prescribed under Rule 8(2) of [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#). The discretion of the Court to extend time for filing an appeal must be exercised based on a proper and reasonable explanation made by the applicant for the delay.
14. In [Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers v Talai Secondary School](#) [2016] eKLR, cited in [Kenya Union of Commercial Food and Allied Workers v Kitui Water Sanitation Company](#) [2021] eKLR, it was held:-

“Inordinate delay would be a matter to be determined on peculiar facts or circumstances of each case. Depending on the circumstances, a delay of even one day may be inordinate while a delay of 7 months may not be inordinate.”
15. In the peculiar circumstances of this case, where no proper explanation has been offered by the applicant as to why a Memorandum of appeal was not filed within 30 days, the Court finds this application to be without merit and unworthy of the exercise of the discretion of the Court to extend



time. Rule 8(4) clearly permits the appeal to be filed without certified copies of proceedings, which, certified copies are to be provided to the respondent later, within a reasonable time. There is no reasonable excuse therefore offered by the applicant as to why the appeal was not filed within 30 days.

16. The application lacks merit and is dismissed with costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 13TH DAY OF APRIL, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

Thiong'o Law & Company Advocates for the applicant

Hamilton, Harrison and Mathews Advocates for the Respondent.

Ekale: Court Assistant

