



REPUBLIC OF KENYA



**Mbithi v Chairman, Board of Management Boys High School (Civil Appeal E024 of 2022) [2023] KEELRC 1900 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1900 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CIVIL APPEAL E024 OF 2022**

**L NDOLO, J  
JULY 27, 2023**

**BETWEEN**

**MICHAEL NGUTA MBITHI ..... APPELLANT**

**AND**

**THE CHAIRMAN, BOARD OF MANAGEMENT BOYS HIGH  
SCHOOL ..... RESPONDENT**

**RULING**

1. This ruling flows from a Preliminary Objection raised by the Respondent by way of notice dated 18<sup>th</sup> March 2022.
2. The objection is premised on the following grounds:
  - a. The appeal is incompetent as it has been filed out of the prescribed time for filing an appeal and no leave was sought and/or granted to file the appeal out of time;
  - b. There is a competent Employment and Labour Relations Court at Machakos which is suitable to handle and determine the matter conclusively.
3. In opposition to the Preliminary Objection, the Appellant filed a replying affidavit sworn by his Counsel, Alfred Nyabena on 16<sup>th</sup> May 2023.
4. Counsel states that the appeal arises from the ruling and order of Hon Martha Opanga, SRM delivered on 25<sup>th</sup> January 2022 in Kangundo CMELRC No E005 of 2021.
5. He depones that the Memorandum of Appeal was filed on 24<sup>th</sup> February 2022, which was well within the 30 days' timeline for lodging an appeal to this Court.
6. The Respondent's Objection is based on two grounds'; first, that the appeal was filed out of time without leave of the Court and second, that the appeal was filed in the wrong court.



7. Regarding the first ground, there is evidence on record that the Memorandum of Appeal was filed on 24<sup>th</sup> February 2022 within the 30-day window allowed in law.
8. On the second ground, the correct position is that although there is a sub registry in Machakos, there is in fact no Employment and Labour Relations Court at Machakos. It was therefore in order for the Appellant to file his appeal in this Court.
9. In light of the foregoing findings, both grounds of the Respondent's Preliminary Objection collapse and the Objection is therefore overruled with costs to the Appellant.
10. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY 2023**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Nyabena for the Appellant

Mr. Watuka for the Respondent

