



**Lisutsa v Bob Morgan Services Limited (Appeal E125 of 2022)  
[2023] KEELRC 2756 (KLR) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2756 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E125 OF 2022  
DKN MARETE, J  
OCTOBER 24, 2023**

**BETWEEN**

**CALEB MUKABANE LISUTSA ..... APPLICANT**

**AND**

**BOB MORGAN SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. This is an application dated 22nd July, 2022 and seeks the following orders of court
  1. That the application be certified as urgent and service of the same upon the respondent be dispensed within the first instance due to reason of urgency.
  2. That this Honourable Court be pleased to grant the applicant herein leave to extend time within which to lodge and serve record of appeal and extend time within to file appeal.
  3. That the costs of this application be provided for.
2. It grounded as follows;
  - a. By a judgment delivered on 1<sup>st</sup> July, 2021, Honourable L.T. LEWA dismissed the claimant's suit except a prayer for Annual leave only.
  - b. That since then claimant/applicant's advocate on record in trial court was not telling him the true position of the matter.
  - c. The applicant herein being aggrieved by the magistrate's court judgment instructed the advocates on record to appeal and be accorded an opportunity to ventilate his grievances to the appellate forum.



- d. The advocate in trial court for the applicant informed him immediately after judgement the file went missing in court's Registry until on 13<sup>th</sup> July 2022, when the applicant travelled from Kakamega to Nairobi to confirm the same.
  - e. That the applicant in person visited the registry on 13<sup>th</sup> July 2022 and found the file, immediately on 18<sup>th</sup> July 2022 addressed the executive officer and requested for the proceedings and judgment, which the timeline stipulated in rule 75(2) of the *courts by Appeal Rules* for the Lodging appeal had lapsed.
  - f. That the applicant's failure to lodge appeal in time is of deliberate and/or intentional and that it will be in the best interest of justice if he is given an opportunity to file and Serve Record of appeal out of time and pursue his intended appeal so that substantive justice is achieve.
  - g. That even if there was delay in lodging appeal on time the mistake of the applicant's Advocate in trial court cannot be shifted to the applicant to deny the course of justice.
  - h. The Respondent will not suffer any prejudice if the orders are given as it is in the interest of all parties that justice is done.
  - i. The applicant has an arguable appeal a demonstrated by the content of the draft memorandum of appeal exhibited herein and lastly, he has given a reasonable explanation for the delay to warrant the court grant him the relief sought.
3. This claimant's application is supported by the claimant/applicants supporting Affidavit sworn on 22nd July, 2022.
  4. The Respondent in a Replying Affidavit sworn on 29<sup>th</sup> September 2023, opposes the application for want of being bad in law and incompetent. It is her prayer that this application be dismissed with costs.
  5. The parties came to court variously until 18th October 2023 when they mutually agreed on determination of the application on the basis of the pleadings so far.
  6. The application sounds neater for the applicant. It is his case that his misfortune were occasioned by his interactions with the cause registry where the court file went missing for a long time. This in effect hampered his attempt to lodge his appeal on time.
  7. Again, the claimant/applicant submits that he has an arguable appeal as is demonstrated by his draft memorandum of appeal exhibited here in. Further, the claimant has awarded a reasonable explanation for the delay in not launching his appeal out of time.
  8. I find for the application. The case for the applicant speaks louder. This is an innocent attempt at pursuing elusive justice at all costs. It would in any event not prejudice the Respondent, or any other soul if this application was granted.
  9. I am therefore inclined to allow the application with costs to the claimant/applicant.

**DELIVERED, DATED AND SIGNED THIS 24<sup>TH</sup> DAY OF OCTOBER 2023.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Kamau instructed by Kabuthia Kamau and Associates Advocates for the claimant/applicant.

Mr. Njuguna instructed by Wainana Ireri Advocate LLP for the Respondent.

