



**Swaleh & 6 others v Compact Freight Systems Limited (Employment and Labour Relations Appeal E065 of 2021) [2022] KEELRC 12822 (KLR) (6 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12822 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E065 OF 2021**

**AK NZEI, J**

**OCTOBER 6, 2022**

**BETWEEN**

**MOHAMMED KIAI SWALEH & 6 OTHERS ..... CLAIMANT**

**AND**

**COMPACT FREIGHT SYSTEMS LIMITED ..... RESPONDENT**

*(Appeal from the judgment of the Hon. M.L. Nabibya, Principal Magistrate, delivered on 12th August, 2021 in Mombasa Chief Magistrate's Court Case No. 254 of 2018 consolidated with 250, 251, 252, 253, 255 and 157 of 2018)*

**JUDGMENT**

1. The appellant herein preferred an appeal to this court against the judgment of Hon ML Nabibya, principal magistrate, delivered on August 12, 2021 in Mombasa Chief Magistrate's Court Cause No 254 of 2018 (consolidated with Cause Nos 250,251,252,253,254,255,257 and 258). The memorandum of appeal, setting out some six grounds of appeal, was filed in this court's registry on September 13, 2021.
2. Rule 8(1) & (2) of the [Employment & Labour Relations Court \(Procedure\) Rules 2016](#) provides 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.'



3. In the case of an appeal from the subordinate courts to this court, a court of equal status with the High Court, the written law that provides for filing of such an appeal is section 79G of the Civil Procedure Act, which provides, in mandatory terms, as follows:-

' Every appeal from a 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 from such period anytime which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

Provided an 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.'

4. In the present case, the appellant's appeal was filed outside the thirty days mandatory period. It was filed out of time, on the 31<sup>st</sup> day, and without the court's leave. For this reason, the appeal is incompetent and bad in law, and is hereby struck off with no order as to costs.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 6<sup>TH</sup> DAY OF OCTOBER 2022**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

**Appearance:**

N/A for Appellant

Ms Murage for Respondent

