

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 2223 OF 2017

SAMUEL OMARI TINEGA.....CLAIMANT/APPLICANT

VERSUS

KENYA METHODIST UNIVERSITY.....RESPONDENT

RULING

1. The Claimant/Applicant seeks to be heard for Orders that this Honourable Court be pleased to issue an order for him to come on record out of time and be allowed to file a Notice of Appeal and Memorandum of Appeal against part of the Judgment delivered on 20th April 2021 by this Honourable Court.

2. The Application is premised on grounds that the Applicant is not satisfied with part of the Judgment and that the advocate he had instructed failed to file a Notice of Appeal in time as required by law. That he thus decided to act by himself and filed the instant Application and has also applied for proceedings to demonstrate his intention to appeal. In the Supporting Affidavit, the Claimant/Applicant depones that this Court has inherent jurisdiction to extend the time for Appeal and that there was no inordinate delay in filing the Notice of Appeal. He further avers that it is in the interest of justice that his Application be allowed as prayed so that he can exercise his right of appeal.

3. The Claimant/Applicant filed a Notice of Motion Application dated 24th June 2021 in which he seeks to file a notice of appeal out of time against part of the Judgment in the case before this Court. The Respondent failed to file a response and instead indicated to Court it had its own motion seeking to reopen the matter by setting aside the Judgment of the Court. As that application by the Respondent was not before the Court, the Claimant's motion was unopposed.

4. The judgment herein was given in April 2021. The Applicant like any litigant who appears in Court has every right to pursue an appeal against the decision of this Court at the Court of Appeal. He asserts that he gave instructions to his counsel to appeal but his advocate failed him. He asserts that the judgment was not to his liking and as such has sought to have it appealed against on some 10 grounds or so. The Notice of Appeal is to be filed in terms of Rule 79 of the Court of Appeal Rules. As such, the Court the Claimant ought to approach for extension of time is not this Court but the Court of Appeal. As he seeks that which only the Court of Appeal has power to grant, the motion is devoid of merit and is dismissed albeit with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY 2021

NZIOKI WA MAKAU

JUDGE