



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 805 OF 2012**

**BETWEEN**

LELAND I. SALANO.....CLAIMANT

**VERSUS**

INTERCONTINENTAL HOTEL.....RESPONDENT

**RULING**

The Court delivered a ruling on 19<sup>th</sup> July 2013 rejecting an application filed by the Respondent, seeking to expunge certain documents relied upon by the Claimant from the record.

The ruling was delivered by Notice, and the Court Assistant Mr. Kidemi confirms he called both Advocates' firms, before delivery on 19<sup>th</sup> July 2013. Communication was through the given phone contacts.

The Claimant then fixed a hearing date for the Main Claim, upon invitation of the Respondent. The Respondent holds there was no invitation to fix the hearing date for the Main Claim. The Court has seen the letter inviting the Respondent's Advocates. There is indication the invitation was received, and acknowledged, but the Respondent's Advocates did not send their representative to fix a hearing date. Hearing was fixed for 19<sup>th</sup> March 2014.

On 10<sup>th</sup> March 2014, the Respondent filed an Application under Rule 16(1) of the Industrial Court (Procedure) Rules 2010 asking this Court to enlarge time to file a Notice of Appeal against the Ruling of 19<sup>th</sup> July 2013, by 7 days.

Relying on the Affidavit of Steven Mutuma, Director of Human Resources of the Applicant sworn on 10<sup>th</sup> March 2014, the Respondent states it was not aware of the delivery of the Ruling of 19<sup>th</sup> July 2013. As it is prejudiced by the ruling, it is only just the Court extends time within which to file the Notice of Appeal.

The Claimant filed Grounds of Opposition dated 10<sup>th</sup> March 2014. The Grounds state that the Court does not have jurisdiction to deal with extension of time; there is no stay of the proceedings; and the application is meant to delay finalization of the matter.

The Learned Counsel for the respective Parties argued the application on 19<sup>th</sup> March 2014.

*The Court Finds and Orders:-*

1. There is no specific rule under the Industrial Court (Procedure) Rules 2010, regulating the extension of time on filing of Notices of Appeal. Section 17(1) of the Industrial Court Act 2011 allows for Appeals on points of Law. The rules do not state how the Court shall extend time, in event a Party has not filed Notice within 14 days as required by the Court of Appeal Rules, Rule 75.
2. The Industrial Court may however invoke Section 12(3) (viii) of the Industrial Court Act, which confers the Court power to grant any other appropriate relief. Rule 27 of the Industrial Court (Procedure) Rules 2010 allows the Court at any time in the conduct of its proceedings, to issue any other order to meet the ends of justice.
3. The Industrial Court may therefore extend time for a Party to lodge a Notice of Appeal. It would be absurd to decline jurisdiction, and hold that only the Court of Appeal should extend time to file a Notice of Appeal at the Industrial Court.
4. Parties whose decisions are delivered on Notice have routinely been notified through their cell-phones. Thousands of decisions have been delivered through this mode, which is in line with the demands of an expeditious administration of justice. This Court tries to avoid a situation where dates for delivery are given, and due to the large number of disputes filed, heard and closed, Parties and Advocates are kept coming to Court on given dates, only to be told their decisions are not ready. The Courts are moving in the direction of paperless administration of justice. It is therefore surprising to hear Mr. Karungo argue that the Court should have served a written notice of delivery of the ruling and the serving Court Assistant, or Process-Server filed an affidavit of service. Parties involved in litigation should embrace IT and steer the country to a paperless justice system. The ruling in question was uploaded on the website of the National Council for Law Reporting immediately upon delivery. The Court has also prepared the full list of pending decisions, indicated when they are delivered, and pasted these lists prominently on the Court notice board. The Court has however taken note that a section of the Court Users prefers dates for the delivery of Court decisions, are given by the Court upon closure of the hearing. The Court therefore, has adopted this proposal, and shall stagger the dates for the reading of the decisions in a way that accommodates the needs of the Court and those of all the Court Users.
5. The Court has noted that Coram for the 19<sup>th</sup> July 2013 is missing from the Court Record. Some person may have plucked the written transcript of 19<sup>th</sup> July 2013 from the file, or it may be that the relevant leaf just fell off. What this Court never fails to do is to record the date and names of participants at any turn of the proceedings.
6. The Respondent has the right to appeal the ruling of 19<sup>th</sup> July 2013, and should not be barred from doing so on the ground that Notice of Appeal has not been filed on time. Similarly, the Claimant has the right to proceed with the hearing of the Main Claim, barring any orders staying execution of the ruling of 19<sup>th</sup> July 2013.

*IT IS THEREFORE ORDERED:-*

- (a) The Respondent shall file its Notice of appeal within 7 days of the delivery of this Ruling.*
- (b) The Claimant may proceed with the prosecution of the Main Claim.*
- (c) No order on the costs*

Dated and delivered at Nairobi this 8<sup>th</sup> day of July 2014

James Rika

Judge