



**Okanga v Mombasa Island Cargo Terminal (Cause 10 of 2019)
[2024] KEELRC 2042 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2042 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 10 OF 2019**

**AK NZEI, J
JULY 25, 2024**

BETWEEN

JAMES AGGREY A OKANGA CLAIMANT

AND

MOMBASA ISLAND CARGO TERMINAL RESPONDENT

RULING

1. Vide its ruling delivered on 23rd September 2023 dismissing the Respondent’s application dated 29th May 2023 seeking a stay of execution of this Court’s decree pending appeal, this Court rendered itself as follows:-

“ 10. Order 42 Rule 6(4) of the *Civil Procedure Rules* on the other hand provides as follows:-

“(4) For the purpose of this rule, an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.”

11. Under Rule 75(2) of the Court of Appeal Rules 2010, a notice of appeal shall be lodged within fourteen days of the date of the decision against which it is desired to appeal.

12. The Court’s judgment against which the Respondent/Applicant desires to appeal was delivered on 4th May 2023. I have noted from the Court’s record herein that a Notice of Appeal dated 18/5/2023 was lodged in this Court’s Registry on 19/5/2023; and was paid for on the same dated at 8:59:23. This was on the 16th day from the date of this Court’s judgment. It follows that the Respondent/Applicant has not demonstrated that it has a valid appeal on



the basis of which an application for stay of execution pending appeal can be considered, and on the basis of which the orders sought herein can be granted.

13. On the foregoing basis, the Respondent/Applicant's Notice of Motion dated 29/5/2023 must fail, and is hereby dismissed with costs."
2. By dint of Order 42 Rule 6(1) of the [Civil Procedure Rules](#), an appealing party whose application for stay of execution of a Court's decree is dismissed by the Court appealed from is allowed to file a similar application in the Court appealed to. Instead of moving to the Court appealed to and seeking a stay of execution of this Court's decree pending hearing and determination of the appeal allegedly filed against the said decree, the Respondent came back to this Court and filed a Notice of Motion dated 5th December 2023 seeking the following orders:-
 - a. That this Court be pleased to issue temporary stay of execution pending hearing of the application.
 - b. That this Court be pleased to review, vary and set aside its order issued on 23/11/2023 and to issue appropriate order of stay pending hearing of the intended appeal.
3. The application, expressed to be brought under Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 45 1(1) and Order 22 Rule 22 of the [Civil Procedure Rules](#), is based on a supporting affidavit of Teddy Onyango, the Respondent's Group Legal Officer, sworn on 4th December 2023. It is deponed in the said affidavit that whereas a Court receipt on filing of the Notice of Appeal was issued on 19th May 2023, the Notice of Appeal was actually lodged on 18th May 2023, and that the said notice was therefore filed on 18th May 2023.
4. The application is opposed by the Claimant/Respondent vide a replying affidavit sworn by him on 11th December 2023.
5. Both parties filed written submissions for and against the application pursuant to the Court's directions in that regard, which I have considered.
6. This Court's power to review its own decrees or orders is provided for in Rule 33(1) of the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#) which provide as follows:-
 - " 33.
 - (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
 - (a) If there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
 - (b) On account of some mistake or error apparent on the face of the record;
 - (c) If the judgment or ruling requires clarification; or



(d) For any other sufficient reason.”

7. In its ruling sought to be reviewed, this Court stated that the Respondent’s Notice of Appeal was filed on 19th May 2023, which was the 16th day from the date of this Court’s judgment. The Respondent/Applicant has stated that according to it, the Notice of Appeal was filed on 18th May 2023; but not 19th May 2023. It is on the basis of this argument that a review is being sought.
8. As already stated in this ruling, Rule 75(2) of the *Court of Appeal Rules 2010*, states that a “Notice of Appeal shall be filed within fourteen days of the decision against which it is desired to appeal.” Counting from the date of this Court’s judgment, which was delivered on 4th May 2023, the fourteenth day was 17th May 2023. 18th May 2023, on which the Respondent /Applicant alleges to have lodged the Notice of Appeal herein, was outside the fourteen days provided for in the aforesaid law.
9. In view of the foregoing, the Respondent/Applicant has not demonstrated the existence of any error that is apparent on the face of the record, discovery of new or important matter or evidence, or that the ruling sought to be reviewed requires clarification. No other sufficient reason has been given on the basis of which the orders sought can be granted.
10. For record purposes, it is worthy noting that a Court document is deemed to be duly filed when the applicable court filing fees is paid, unless the Court, in exercise of judicial discretion, deems the document to have been filed on the date when it was lodged and/or uploaded onto the Court’s e-filing portal if there are factors favoring the exercise of such discretion. In the present case, the document in issue was clearly uploaded/filed outside the time prescribed by law. Payment of Court filing fees was also made outside the prescribed period. The whole process was initiated and completed outside the prescribed period.
11. I find no merit in the Notice of Motion dated 5th December 2023, and the same is hereby dismissed with costs.
12. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 25TH July 2024

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Claimant

.....Respondent

