



**Omar v Katar & another (Appeal E012 of 2020)
[2024] KEELRC 1920 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1920 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E012 OF 2020**

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

BETWEEN

SALIM MRAMBA OMAR APPELLANT

AND

OMAR KATAR 1ST RESPONDENT

SWABRA KATAR 2ND RESPONDENT

*(Being an Appeal against the judgment of Hon. F. Kyambia – CM delivered
on 16th December 2020 at Mombasa in the Employment Case No. 598 of 2019)*

RULING

1. On 20th April 2023, this Court delivered its judgment on the appeal herein and rendered itself as follows:-

“2. The Appellant filed a Record of Appeal on 20th June 2022 and on 28th September 2023, Counsel for the Appellant told the Court that the Record of Appeal filed in Court and served on the Respondent was complete. Rule 8(4) of the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#) provides:-

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(4) A memorandum of appeal shall be accompanied by copies of the proceedings, all documentary evidence relied on and a copy of the judgment from the proceedings of the matter being appealed against.



Provided that where copies of proceedings are not filed with the memorandum of appeal, the Appellant shall file such copies as soon as possible and within a reasonable time.”

3. The Appellant’s Memorandum of Appeal was not accompanied by a copy of the trial Court’s proceedings and the other documents referred to in Rule 8(4) when it was filed on 21st December 2020. When the Appellant eventually filed a record of appeal on 20th June 2022, he did not include a copy of the trial Court’s proceedings. Proceedings of a trial Court are pivotal in an appeal as the evidence presented before the trial Court is what a first appellate Court is required to re-examine and to re-evaluate vis-a-vis the judgment appealed against before arriving at its own judgment on whether or not to allow the appeal....
 5.An appeal presented for determination without a copy of the trial Court’s proceedings is not a competent appeal, and can only be struck off.
 6. It is my finding that the Appellant’s appeal herein is incompetent, and it is hereby struck off with no order as to costs.”
2. On 8th November 2023, over six months from the date of the said judgment, the Appellant filed an evenly dated Notice of Motion seeking the following orders:-
 - a. That the orders of this Court made on 20th April 2023 which struck off the Appellant’s appeal dated 21/12/2020 be set aside, varied and/or reviewed.
 - b. That with leave of the Court, the trial Court’s typed and certified proceedings and judgment dated/issued on 31/10/2023 be treated as a supplementary record of appeal filed within the required time, and be admitted as part of the record of appeal in this matter.
 - c. That with leave of the Court the Appellant’s appeal be reinstated, and the appeal allowed to proceed to be heard and determined.
 - d. That costs of the application be provided for.
 3. The application is based on the supporting affidavit of Salim Mramba Omar sworn on 8/11/2023, in which the said person (being the 1st Appellant/Applicant) gives a chronology of how his Advocates on record applied for the trial Court’s proceedings, eventually obtaining them on 31/10/2023. The foregoing is the application before me, and is opposed by the Respondent.
 4. Parties filed written submissions for and against the application pursuant to this Court’s directions in that regard, which I have considered.
 5. I will not belabor the point in this matter. The Appellants instituted an incompetent appeal on 21/12/2020. Incompetent because they did not comply with the mandatory provisions of Rule 8(4) of this Court’s Rules, filing a memorandum of appeal that was unaccompanied by any of the documents referred to in the said rule. When the Appellants finally filed a record of appeal on 20/6/2022, obviously sheltering under the grace issuing from the proviso to Rule 8(4) of the said rules, they did not include the trial Court’s proceedings in the said record, and did not seek the Court’s leave and extra time to file a supplementary record of appeal placing on record the said proceedings.



6. Indeed, on 28/9/2022, Miss Katu Advocate, appearing for the Appellants, addressed the Court as following:-

“The mention is to confirm filing of the record of appeal. The record was filed on 20/6/2022 and is complete. I pray for directions on hearing of the appeal.”

7. The Court proceeded to give directions on disposal of the appeal by way of written submissions, which both parties subsequently filed. The Court delivered its judgment as already stated in this Ruling and struck off the appeal for being incompetent.

8. Proceedings of this Court shall not be taken round in circles by parties to such proceedings and/or their legal Counsel. Judicial time is a core resource in the administration of justice, and parties should always ensure to comply with both the law and rules of procedure in the conduct of their matters to avoid the filing of applications that would otherwise be unnecessary. That way, case backlogs in our Courts will become a thing of the past.

9. I have also noted that the Appellant (Applicants) are seeking to set aside orders, whereas what this Court delivered on 20/4/2023 was a judgment, from which a decree ordinarily issues.

10. The summary of all the foregoing is that I find no reason to either set aside or to review this Court’s decree/judgment passed on 20/4/2023 as no tenable reasons have been given by the Appellant/Applicants. In particular, the application does not meet the threshold for review of this Court’s Orders and decrees as set out in Rule 33(1) of this Court’s rules. I find no merit in the Notice of Motion dated 8/11/2023, and the same is hereby dismissed with costs.

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:

.....Appellant

.....Respondent

