



**Twaweza Kenya Apparel [EPZ] Limited v Juma; Mwangolo (Respondent) (Appeal E100 & E099 of 2025 (Consolidated)) [2025] KEELRC 2782 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2782 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E100 & E099 OF 2025 (CONSOLIDATED)**

**M MBARŪ, J  
OCTOBER 16, 2025**

**BETWEEN**

**TWaweza Kenya Apparel [EPZ] Limited ..... APPELLANT**

**AND**

**Khadija Mnyazi Juma ..... RESPONDENT**

**AND**

**Chari Ruwa Mwangolo ..... RESPONDENT**

**RULING**

1. The respondent filed applications dated 18 July 2025 under the two appeals filed with ELRCA No. E100 and ELRCA No. E099 of 2025. Both applications are against the appellant and relate to the same issues. ELRCA E100 of 2025 is applied to address the issues and findings in ELRCA No. E099 of 2025.
2. The respondent filed an application dated 18 July 2025 under Rule 15 of the Employment and Labour Relations Court (Procedure) Rules (the Court Rules), section 1A, 1B of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules seeking orders:
3. The appellant's Memorandum of Appeal dated 5 June 2025 be dismissed for failing to file the Record of Appeal within the time stipulated in law.  
Costs of this application be in the cause.
4. The application is supported by the respondent, who avers that pursuant to a suit filed against the appellant on 3 June 2024, the trial court delivered judgment on 6 May 2025 in favour of the respondent for a sum of Ksh.144,100. The appellant was aggrieved and filed a Memorandum of Appeal on 5 June 2025. The respondent avers that it is now over 60 days since the judgment was delivered in the lower court, and the appellant has not filed its Record of Appeal. The presumption is that the appellant is no



longer interested in the appeal, which should have been filed within 60 days from 6 May 2025 under Rule 15 of the Court Rules.

5. The appellant has not settled the decretal sum. The actions by the appellant are an abuse of court process and meant to delay the course of justice and to deny the respondent the fruits of the judgment. The appeal should be dismissed.
6. In reply, the appellant filed the Replying Affidavit of Christopher Njoroge Kinyanjui, the Human Resources Manager, who avers that on 6 May 2025, the trial court delivered judgment in favour of the respondent. The appellant instructed its lawyers to file an appeal, but the judgment of the trial court was not posted on 13 May 2025. The Memorandum of Appeal was filed on 3 June 2025.
7. Kinyanjui avers that the instant application is premature since under Rule 22 (1) of the Court Rules, the matter has not yet gone through application directions. The appellant is still pursuing certified copies of typed proceedings from the trial court. Various communications have been issued in this regard.
8. Rule 15(4) of the Court Rules gives the court discretion to call and rely on the court file or material for the proceedings appealed against in the disposal of the appeal where the record of appeal has not been filed. Rules 14 and 15 of the Court Rules provide for circumstances where an appeal can be dismissed under Rule 22 (2) and (3). The appeal was lodged in time, and the instant application should be dismissed.
9. Both parties attended court and made oral submissions.
10. The single issue for determination is whether the instant appeal dated 5 June 2025 should be dismissed for want of the Record of Appeal as required under Rule 15 of the Court Rules.
11. First, rules of procedure exist for a reason. This is to ensure the orderly conduct of court processes. Also, to ensure that every party is aware of what is expected of them without ambush.
12. Secondly, the rules of procedure overriding the objective are to facilitate access to justice for all persons as required under Article 48 of *the Constitution*.
13. Additionally, the rules of procedure inherently assist the court in ensuring the rule of law. Each party is given a fair chance to urge its case in an orderly manner.
14. The Court Rules, therefore, assist the court in administering justice through the various procedures provided in the Law. See *Ann Wanjunu v Mwihaki Waruiru & Others Civil Appeal No. 145 of 2017*. The Court of Appeal emphasised:

“... These rules exist to aid the Courts in conducting orderly business. It was therefore the duty of the applicant to comply with those rules. Since it is conceded that there was non-compliance on her part, the Rule 4 procedures came in handy to afford her a window of hope as a defaulting party. However, in order to benefit from that window of hope, she had to meet the thresh hold set under the Rule 4 Procedures, which unfortunately she failed to meet. My hands are therefore tied. I cannot shut my eyes to the reasons advanced above as reasons for the failure to meet that threshold.”

15. In this case, the appellant can therefore not correctly assert that the court has not yet issued directions on the appeal under Rule 22; therefore, the application by the respondent is premature.

Rule 15(1) of the Court Rules is mandatory:



- 15.(1) A memorandum of appeal shall be accompanied by a record of appeal comprising a certified copy of pleadings, the proceedings, any documentary evidence relied on, and the judgment, ruling, decision, order, decree or award appealed against the Court Rules are generous to the extent that where a party is not able to file the Record of Appeal immediately or in full, Rule 15(2) allows an appellant to file the Record of Appeal within 60 days from the date of delivery of judgment from the trial court:
- (2) Where the record of appeal is not filed together with the memorandum of appeal, the appellant shall file the Record within sixty days from the date of delivery of the judgment, ruling, decision, order, decree or award appealed against.
16. The appellant has not filed any Record of Appeal to date.
17. Reliance on Rule 15(4) of the Court Rules, where the court may apply its discretion and call for the trial court file. Such discretion must be used judicially and judiciously. Such discretion must be invoked for good cause. None exists in this instance on the face of the application by the respondent.
18. The appeal filed on 3 June 2025, devoid of the Record of Appeal and which has not been filed within 60 days as required under the Court Rules, renders the appeal invalid. It is hereby dismissed.
19. The respondent is gracious to the extent that costs should be in the cause. The appellant shall meet the costs due to the respondent.
20. Accordingly, the application dated 18 July 2025 is allowed. The appeal is hereby dismissed. Costs to the respondent.
21. The findings above shall apply to ELRCA No. E099 of 2025. The appeal is dismissed. Costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 16<sup>TH</sup> DAY OF OCTOBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

