



**Maithya v Saj Ceramics Limited (Civil Application 182 of 2019)
[2024] KECA 511 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KECA 511 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 182 OF 2019
S OLE KANTAI, P NYAMWEYA & JM MATIVO, JJA
APRIL 26, 2024**

BETWEEN

JOEL MAITHYA APPLICANT

AND

SAJ CERAMICS LIMITED RESPONDENT

(An application seeking to strike out the Notice of Appeal dated 27th March 2017 from the Judgment of the Employment and Labour Relations Court at Nairobi (Wasilwa, J.) dated 30th June 2016 in ELRC Cause No. 683 of 2012)

RULING

1. Judgment was entered for the applicant Joel Maithya against the respondent Saj Ceramics Limited on 30th June, 2016. In a ruling delivered by Sichale, J.A the applicant was granted leave to file and serve Notice of Appeal within 7 days of 24th March, 2017 and to file record of appeal within 30 days of the date of the ruling. A Notice of Appeal was lodged on 28th March, 2017.
2. In the Motion before us brought under Sections 3A and 3B of the [Appellate Jurisdiction Act](#) and Rules 42, 83 and 84 of the [Court of Appeal Rules](#), 2010 (since replaced by [Court of Appeal Rules](#), 2022) the applicant prays that the Notice of Appeal lodged on 28th March 2017 be deemed as withdrawn. The applicant says in grounds in support of the application and in supporting affidavit that after this Court's ruling the respondent filed Notice of Appeal as ordered; that at the time of filing the Motion (before us) it was 783 days after the said ruling and there was an inordinate delay by the respondent in filing an appeal. The respondent had been granted a stay of execution pending appeal; notification to collect proceedings by the trial court was issued on 5th March, 2019 but the respondent had not filed appeal as ordered in the ruling of 24th March, 2017; that the respondent had lost interest in pursuing an appeal and Notice of Appeal should be deemed as withdrawn.



3. There is a replying affidavit by Joseph Njoroge Mbugua, the respondent’s lawyer, who says that “...the applicant’s application is incomplete and misconceived and further that it ought to be struck out with costs...”; that the respondent was granted leave to file an appeal; that Notice of Appeal was filed on time as ordered after which the respondent applied for proceedings and judgment of the trial court; that there were constant follow ups of the proceedings and Judgment of the trial court and a Certificate of Delay shows that proceedings were ready for collection on 15th May, 2019 but the lawyers office was not informed of readiness of those documents until 30th May, 2019 – that the respondent should be given time to prosecute its appeal.
4. When the Motion came up for hearing before us on 19th March, 2024 the applicant was represented by learned counsel Miss Magitsi while the respondent was represented by learned counsel Mr. Mbugua. Counsel for the applicant in a highlight of written submissions stated that the respondent had not filed record of appeal within the time given in the ruling of this Court made on 24th March, 2017; that a record of appeal filed on 8th July, 2019 was out of time and therefore Notice of Appeal should be deemed as withdrawn.
5. Mr. Mbugua in a highlight of submissions thought that the application was incompetent and should be struck out.
6. We have considered the application, record of the Motion and submissions made.
7. The ruling extending time to file notice and record of appeal was given on 24th March, 2017. Notice of Appeal was lodged within the specified time. We have seen a Certificate of Delay issued on 13th May, 2019 by the Deputy Registrar, Employment and Labour Relations Court. Both sides agree that record of appeal was lodged on 8th July, 2019. This Court had ordered on 24th March, 2017 that Notice of Appeal be filed
8. within 7 days and record of appeal be filed within 30 days thereafter. The record of appeal was not filed within the timelines set by the Court. Certificate of Delay issued on 15th May, 2019 states that it took 967 days to prepare proceedings. This document is not of any assistance to the respondent. Even if 30 days granted by this Court to lodge record of appeal was deemed to run from the date Certificate of Delay was issued record of appeal lodged on 8th July, 2019 is outside 30 days of the date of issue.
9. We agree with the applicant that Notice of Appeal lodged on 29th March, 2017 should be deemed as withdrawn. We allow the Motion dated 20th June, 2019 and award costs of the same to the applicant.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF APRIL, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL



I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

