



**Masoud v Kenya Revenue Authority (Civil Appeal (Application)
E048 of 2023) [2024] KECA 1733 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1733 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E048 OF 2023
AK MURGOR, P NYAMWEYA & GV ODUNGA, JJA
DECEMBER 6, 2024**

BETWEEN

MUNIR ABUBAKAR MASOUD APPLICANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

(An application to strike out the respondent's appeal from the Judgment and decree of the Employment and Labour Relations Court at Mombasa (Ongaya, J.) dated 22nd July 2022 in ELRCC No. 906 of 2021)

RULING

1. By way of a Notice of Motion dated 15th August 2023 pursuant to rules 84 and 88 of the Court of Appeal Rules 2020, the applicant, Munir Abubakar Masoud seeks orders for the Kenya Revenue Authority, the respondent's appeal to be struck out, and for a grant of the costs of the appeal and of this application.
2. The applicant's motion is brought on several grounds of which are that the judgment, the subject of the appeal was delivered on 22nd July, 2022, and the Notice of appeal was filed on 28th July, 2022; that the Record of appeal was filed on 11th April, 2023. It was contended that by virtue of rule 84 of the rules, the appeal ought to have been instituted within 60 days of the lodging of the Notice of appeal, that is, by end of September, 2022, but that it was instituted way out of time. It was further contended that the Record of appeal does not contain the trial judge's notes of the hearing or proceedings as required by rule 89 (d) of the rules which omission has rendered it incompetent; that no leave was sought in filing the Record of appeal out of time, and no subsequent leave was sought in filing a Supplementary Record of appeal.
3. The application is supported by the affidavit sworn on the same date of Yusuf M. Aboubakar, counsel for the applicant in which he reiterates the grounds on the face of the application.



4. In response to the application, the respondent has filed a replying affidavit sworn on 15th August 2023 by Nick Otieno Osoro advocate in which he deposes that the Employment and Labour Relations Court delivered its Judgment on 22nd July 2022 and a Judgment Addendum on 29th July 2022, where it made declarations of violation of respondent's constitutional rights and directed the respondent to pay the applicant Kshs. 15,000,000 by 1st October 2022 failing which, interest to be payable thereon at court rates from date of the judgment until full payment; that aggrieved by the Judgment the respondent immediately filed an application for stay of the execution of the Judgment, which application was decided in its favor in a ruling of 24th February 2023; that in the ruling, this Court directed that, "... the Appellant to file and serve the record of appeal within the next forty-five 45 days and that hearing of the appeal be fast- tracked..." ; that the respondent filed its Record of appeal on 4th April 2023 at 4:04 pm, which was within the timelines specified by the Court, even as it awaited a copy of the typed proceedings.
5. It was contended that thereafter, the respondent obtained certified typed proceedings on 13th April 2023 and pursuant to rule 88 of the rules of this Court, it filed the Supplementary Record of appeal on 17th April 2023; that for these reasons, the application dated 15th August 2023 is incompetent and an attempt to delay the proceedings. It was further contended that the applicant is guilty of material non-disclosures and has perjured himself through making false representations and as such, is not entitled to the reliefs sought.
6. The respondent filed written submissions, and when the motion came up for hearing on a virtual platform, learned counsel for the applicant Mr. Lisanza informed us that they would rely entirely on their written submissions. However, a consideration of the record does not disclose that the applicant had filed written submissions.
7. For his part, learned counsel Mr. Osoro for the respondent opposed the application. Counsel submitted that the applicant was acting in person and appointed his counsel on 4th July 2023; that the present application was filed on 15th August 2023 which was 42 days outside the mandatory provisions of rule 84; that the respondent filed its Record of appeal on 4th April 2023 at 4:04 pm, that being 39 days after the Court order of 24th February 2023, which was within the timelines issued by Court.
8. Counsel submitted that the respondent was diligent in following up the typed proceedings which were obtained on 13th April 2023 and pursuant to rule 88, it filed its Supplementary Record of Appeal on 17th April 2023.
9. As a brief background to this application now before us, the applicant, was employed by the defunct East African Customs & Excise Department on 1st December 1975. The respondent, the Kenya Revenue Authority, is the successor of the defunct body. After serving for a period of 23 years, the respondent retired the applicant in the public interest on 28th September 1998. Some 18 years later, on 25th November 2016, the applicant filed a claim in the Employment & Labour Relations Court in Mombasa challenging his retirement, which he deemed to have been a dismissal.
10. In his claim, the applicant pleaded that the respondent and its predecessor considered him a disgruntled element and treated him in a discriminatory manner; that the respondent used him as a scapegoat for crimes committed by other officers who the applicant was accused of protecting; and that the termination of his employment was unprocedural, illegal, malicious and undertaken purely for the purposes of settling scores, which actions ultimately destroyed the applicant's career. He also sought a declaration that the respondent had violated his rights; an order for adequate compensation and payment of back pay with interest until proper termination.



11. The respondent filed a response to the claim on 6th September 2017 in which it denied all the applicant's averments, and contended that it was not responsible for the allegations against its predecessor, since it has been in existence for only five years prior to the applicant's retirement in public interest, and therefore, it was not responsible for the applicant's tribulations.
12. The Employment and Labour Relations Court found that the respondent had violated the applicant's rights and freedoms and, awarded him Kshs.15, 000,000 payable by 1st October 2022, failing which the amount would accrue interest at court rates from the date of judgment until payment in full.
13. Aggrieved the respondent filed a Notice of appeal on 25th July 2022 and an application to this Court seeking stay of execution of the decree. By a ruling dated 23rd February 2023, this Court allowed the application and ordered the respondent to file and serve the Record of appeal within 45 days from the date of the ruling. As stated above the record was filed on 4th April 2023.
14. We have considered the motion, the affidavit in support, the reply and the parties' submissions. In this application the applicant seeks to strike out the respondent's appeal for the reason that it was filed out of time. However, according to the respondent it filed a Notice of Appeal and immediately thereafter, filed an application for stay of the execution of the Judgment which application was decided in its favor in a ruling dated 24th February 2023. In the ruling, this Court directed the appellant to file and serve the record of appeal within the next 45 days and for the hearing of the appeal to be fast-tracked. The respondent filed its Record of appeal on 4th April 2023 at 4:04 pm, which was within the timelines ordered by this Court.
15. Thereafter, the respondent obtained the certified typed proceedings on 13th April 2023 and pursuant to rule 88 of the rules filed the Supplementary Record of appeal on 17th April 2023.
16. Rule 3 of this Court rules, provides for computation of time for doing any act pursuant to time fixed by the rules or a decision of this Court. It provides:
 - a. the period of days from the happening of an event or the doing of an act shall be deemed to be exclusive of the day in which the event happens or that act or thing is done;
 - b. ...
 - c) ..
17. The Supreme Court in the case of Independent Electoral & Boundaries Commission vs Jane Cheperenger & 2 others SC Petition No.5 of 2016 [2018] eKLR underscored the importance of complying with Court orders and directions and stated that every party has an obligation to honour the court's directions.
18. In the instant case, this Court ordered the respondent to file the Record of appeal within 45 days from the days of the ruling of 24th February 2023. In compliance with that order, the respondent filed the Record within 39 days of the Court order. In effect, the Record having been filed within the period specified by this Court, we find that the applicant's application to strike out a Record that was filed pursuant to an order of this Court was unwarranted and unnecessary.
19. As concerns the Supplementary Record of appeal, rule 94 (3) is explicit. It provides:

An appellant may, at any time lodge in the appropriate registry four copies of a supplementary record of appeal, and as soon as practicable thereafter, serve copies on every respondent who has complied with requirements of rule 81."



- 20. This means that the respondent was entitled to lodge a supplementary record of appeal at any time and without leave of this Court. Having explained that the typed proceedings were not ready by the time of filing the record, the respondent was entitled to lodge the supplementary record at any time after filing the record, which it did on 17th April 2023, after it obtained the typed proceedings. We cannot fault the respondent for filing the Supplementary record in the manner enumerated. This ground also lacks merit and fails.
- 21. In sum, the applicant’s Notice of Motion dated 15th August 2023 is unmerited, and is accordingly dismissed. Costs in the appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER, 2024.

A. K. MURGOR

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

