



**Judicial Service Commission v Kisang (Miscellaneous Civil Application
E391 of 2022) [2023] KECA 548 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KECA 548 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION E391 OF 2022
HA OMONDI, JA
MAY 12, 2023**

BETWEEN

JUDICIAL SERVICE COMMISSION APPLICANT

AND

PETER KIPKEMOI KISANG RESPONDENT

*(Being an application for stay of execution of the entire judgment
of the Employment and Labour Relations Court at Nairobi Ocharo
(J.) dated 29th September 2022 in ELRC Case No.E521 of 2020)*

RULING

1. The respondent, being an employee of the applicant, had filed a suit in the Employment and Labour Relations Court alleging unfair and wrongful termination of employment; and sought reinstatement to his employment with immediate effect without loss of benefits; and to be paid all unpaid salaries, allowances and benefits with interest at court rates. The trial court granted the prayers sought.
2. The applicant, aggrieved by the outcome, filed a draft memorandum of appeal, and also prayed that its application for stay of execution of the judgment and decree, pending hearing of the appeal be certified urgent. I declined the certification sought.
3. By a letter dated February 15, 2023, the applicant through its counsel, G&A Advocates requested the Deputy Registrar to have the matter placed before a single Judge for inter partes hearing on the question of urgency under rule 49(5) of this *Court's Rules* 2022. In the letter, the applicant explains that it has filed an application for stay of execution, a further affidavit and submissions thereto, yet the respondent has filed contempt proceedings by a Notice of Motion dated December 29, 2022, which are underway before the Employment and Labour Relations Court complaining about the applicant's failure to comply with the Court's orders.



4. By a further affidavit sworn by the applicant's accounting officer, the Chief Registrar, expresses apprehension that there is a real likelihood of a warrant of arrest being issued against her for committal to Civil Jail as the respondent has not been reinstated to his employment.
5. The respondent in reaction to this, contends that the applicant had not even filed an appeal, and the scales must be weighed against the fact that he has been out of employment and lost his source of livelihood
6. Upon considering the matters raised in the letter by counsel for the applicant dated February 15, 2022, his submissions on the issue of urgency as well as the submissions by counsel for the respondents who are opposed to the matter being certified as urgent, I acknowledge that the contempt proceedings loom large over the applicant's head, yet the question that fails to get an answer is whether there is a competent appeal on record.
7. The applicant has filed a draft memorandum of appeal; I have combed through the documents, but failed to locate a copy of the notice of appeal. Under rule 77 (1) of this *Court's Rules*, an appeal is commenced by filing of a notice of appeal, that is what gives life to an appeal, and in the absence of such notice, then there is no competent appeal, and the application sought to be certified has no subsequent event to anchor itself to. It is precisely for this reason that I had declined to certify the matter as urgent, and that position remains.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2023.

H. A. OMONDI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

