



**Muigai v SKF Kenya Limited (Civil Application E160 of 2022)  
[2022] KECA 1189 (KLR) (28 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1189 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E160 OF 2022  
A ALI-ARONI, JA  
OCTOBER 28, 2022**

**BETWEEN**

**TERRY MUIGAI ..... APPLICANT**

**AND**

**SKF KENYA LIMITED ..... RESPONDENT**

*(An application for leave to appeal as a pauper in an intended Appeal against the Judgment and Decree of Hon. NZIOKI WA MAKAU J. in the Employment and Labour Relations Court at Nairobi delivered on 6th October 2021 in (E.l.r.c Cause No. 1254 Of 2015))*

**RULING**

1. The application before Court is dated the 6<sup>th</sup> of May 2022 and brought pursuant to Article 159 of *the Constitution*, rules 4,39,42,43 and 115 of the *Court of appeal rules*. The applicant seeks for three prayers namely; that the Honourable Court do order the registrar of the court to conduct an inquiry into the pauperism of the applicant and render a report; the court do allow the applicant to conduct his appeal as a pauper; and the Honourable court do extend time within which the applicant may file and serve her record of appeal and memorandum of appeal having been aggrieved by the decision of the Hon. Nzioki wa Makau J in ELRC Cause No. 1254 of 2015.
2. In the grounds on the face of the Application and the affidavit in support the applicant states that having being aggrieved by the decision of the ELRC court's decision she obtained ago ahead to file the appeal. She prepared and had her memorandum and record of appeal assessed at the sum of Kshs.100, 400 which she is unable to pay as she is unemployed. The first prayer seeks to have the Registrar of the court make an inquiry in order to report to the court on the status of the applicant and whether she qualifies under the now rule 120 of this court's rule to conduct her appeal as a pauper. Rule 120 previously 115 stipulates as follows on this subject;



- (1) If, in any appeal from a superior court, in exercise of its original or appellate jurisdiction in any civil case, the court is satisfied on the application of an appellant that the appellant lacks the means to pay the required fees or to deposit the security for costs, and that the appeal is not without reasonable possibility of success, the court may order, direct that the appeal may be lodged
    - a. Without prior payment of fees of court, or on payment of any specified amount less than the required fees; or
    - b. Without security for costs being lodged, or on lodging of any specified sum less than the amount fixed by rule 109

.....
  - (2) The Registrar shall be entitled to be heard on any such application.”
3. The applicant has not attached any evidence in support of her assertion that she lacks finances to pay the court fees. In *Peter Onditi Ogugu v All pack Industries Limited & Another* (2014) the court had this to say on the subject matter;
- “Until such time that access to courts will be open to all without the requirement for payment of fees and costs, a party seeking dispensation from the responsibility to pay court fees must demonstrate by evidence that they are deserving, by reason of their indigence or other circumstances, to be relieved from that responsibility.”
4. Having stated the above, I note that this court has allowed the prayer seeking for the registrar’s intervention at this stage so as to inquire into the status of an applicant and report to court in the first instance. Makhandia JA in *Jane Njoki Gichuru versus The Attorney General & Another* Civil Application No. 75 of 2020 in allowing a similar application in all fours with the application before this court was guided by the holding in *Benson Mbubhu Gichuhi Versus Norwegian Peoples Aid* (2012) e KLR as follows;-
- “the learned single judge heard the application that was before him and heard the same without the input of the Deputy Registrar of this court as is required by the provisions of rule 115(2) of this court’s rules. In our view, the hearing could only proceed after the report of the Deputy Registrar had been received on the status of the applicant. Perhaps that input of the Deputy Registrar would have included his investigation as regards position as of now as opposed to the position as obtained when the applicant was granted leave to proceed as a pauper earlier on.
- We order that the applicant appears before the Deputy Registrar for purposes of the latter investigating his status and preparing a report which should be availed to a single judge of this court who would hear the matter *de novo*. We make no order as to costs.”
5. In order to allow the registrar of the court carry out the task of investigating and reporting on the status of the applicant the other two prayers will have to be placed on hold awaiting the said report in the meanwhile.
6. Accordingly, therefore, the registrar is directed to investigate the status of the applicant in relation to the application for her to be allowed to proceed in the intended appeal as a pauper and file a report within the next 21 days of the date hereof.



7. The registrar will thereafter cause the file to be placed before any single judge of the court for hearing of the other two prayers.

**DATED AND DELIVERED AT NAIROBI THIS 28TH OF OCTOBER 2022**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

