



**Sigei v Unilever Tea Kenya Limited (Cause 42 of 2019)
[2025] KEELRC 391 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 391 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE 42 OF 2019
J RIKA, J
FEBRUARY 14, 2025**

BETWEEN

ALFRED SIGEI CLAIMANT

AND

UNILEVER TEA KENYA LIMITED RESPONDENT

RULING

1. Judgment in this Cause was delivered on 22nd April 2022.
2. The Respondent filed a Notice of Appeal, dated 5th May 2022.
3. A Ruling made on 7th December 2022, stayed execution of Judgment/ Decree, pending hearing and determination of the proposed Appeal.
4. The Claimant feels that the Respondent has not taken adequate steps, to prosecute the Intended Appeal, and lodged an Application dated 19th August 2024, asking the Court to lift the order of stay of execution; have the decretal amount released to the Claimant; and the Notice of Appeal deemed to have been withdrawn.
5. The Application is founded on the Affidavit of the Claimant, sworn on 16th August 2024.
6. He complains that other than requesting for typed proceedings, the Respondent has taken no steps to move the Court to have the Intended Appeal filed, heard and disposed of. Failure to take steps, equates to withdrawal of the Intended Appeal. Delay in moving the Court is inordinate. The Claimant has been denied the fruits of his litigation unreasonably. There is need therefore, to review the order of stay of execution, set it aside, and allow execution to proceed; and declare that the Notice of Appeal has been withdrawn.
7. The Respondent opposes the Application through the Affidavit of its General Counsel, Jonathan Wanguro, sworn on 20th November 2024.



8. Wanguro explains that he has been advised by his Advocate, Esther Kinyenje-Opiyo, that this Court does not have the jurisdiction to deem a Notice of Appeal, to have been withdrawn.
9. In any event, the Respondent has taken steps to prosecute its Intended Appeal. It has requested for typed proceedings from the Deputy- Registrar of the Court, through letters dated 5th May 2022, 27th January 2023, 6th February 2024, 16th September 2024 and 1st September 2024.
10. Proceedings have not been supplied, and the Record of Appeal remains incomplete.
11. The Respondent states that the Claimant has failed to disclose that the Ruling on stay of execution, was procured through the consent of the Parties. It can only be set aside upon the Claimant establishing that he did not voluntarily consent to recording of the Ruling. The Claimant has not attached the order sought to be reviewed. The Respondent prays the Court to dismiss the Application.
12. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions.

The Court Finds: -

13. The Parties cannot be blamed for not taking steps, in having the Intended Appeal prosecuted, or for feeling hard done by the delay, in filing and finalization of the Intended Appeal. The Respondent has applied to the Court for typed proceedings multiple times, from the year 2022, to no avail.
14. There appears to be a worrisome pattern and practice of delay, in typing of proceedings, at the E&LRC Kericho. This is not the only Appeal that has been delayed, on account of lack of unavailability of typed proceedings. Several complaints of a similar nature have been placed before the undersigned Judge, for the short period he has dealt with matters from this jurisdiction.
15. There are Parties who have been compelled to type the handwritten proceedings for themselves, and forward the typed proceedings to the Court, for certification. This is unacceptable. The Court has an obligation in law, and in its service delivery charter, to supply Parties with its typed proceedings. It cannot be that court files are entrusted to litigants and their representatives, to perform work which the Judiciary is legally mandated to perform.
16. The Parties herein are not to blame. The Respondent has done what it can do legally, to prosecute its Intended Appeal. The Claimant correctly feels that he has been delayed in enjoyment of his fruits of litigation, but assigns blame wrongly on the Respondent, instead of placing blame on the Judiciary, which is wholly at fault.
17. There is a problem, perhaps one of inadequate, or ill-equipped secretarial staff at E&LRC Kericho, a default that the Office of the E&LRC Registrar, is requested through a copy of this Ruling to look into. Delay in supplying Parties typed proceedings, for as many as 3 years, is a serious failure of the Judiciary's operational system. It is a grave dereliction of the Court's constitutional duty under Article 159 [2] [b], which requires that justice shall not be delayed. The trial was not lengthy, involving a multitude of witnesses, and a copy of the typed Judgment is on record. Why would it take over 3 years, as many years as it took to file, hear and determine the Claim, to supply Parties with typed proceedings?
18. That said, what is the Court to do, short of sanctioning execution of the decree as proposed by the Claimant, to facilitate the Parties in completing the appellate process?
19. If this was an Appeal Intended to be filed in this Court from the Lower Court, the Court would fall back on Part 111 of its 2024 [Procedural] Rules. Rule 15 [4] would enable the Court to hear and determine the Appeal on the strength of the trial court file, in lieu of a Record of Appeal. There are



also Rules on filing of Supplementary Record of Appeal, which would enable an Intended Appellant, to introduce the typed proceedings at a later stage, obviating the likelihood of an Appeal stagnating such as the present one has.

20. But the Intended Appeal is on a decision from this Court, to the Court of Appeal, and the applicable Rules on the Record of Appeal, are the Procedural Rules governing the Court of Appeal. The role of the trial Court is limited.
21. There is therefore not much assistance in terms of judicial intervention, that the E&LRC can extend to the Parties, to hasten the filing, hearing and determination of the Intended Appeal.
22. It most definitely cannot strike out the Notice of Appeal, or deem the same to have been withdrawn. It cannot revisit the order of stay of execution which was procured consensually by the Parties.
23. Rules 85 and 86 of the *Court of Appeal Rules*, would perhaps enable the Claimant to move that Court, to declare the Notice of Appeal as withdrawn, or to strike out the Notice of Appeal, on the ground that the Respondent has failed to take some essential steps, in pursuit of the Intended Appeal. The E&LRC does not have jurisdiction to deem the Notice of Appeal to have been withdrawn, or to strike out the Notice. Jurisdiction is effectively with the Court of Appeal, once the Notice of Appeal was filed.
24. The Court can only assist the Parties, by making the following orders.

It is ordered: -

- a. The orders sought by the Claimant, through the Application dated 19th August 2024 are declined.
- b. Instead the Court orders that the Respondent shall be supplied with typed and certified proceedings of the Court, within 30 days of this Ruling.
- c. The Office of the Registrar shall ensure that the proceedings are typed at any of the fully resourced Court Registries, and are ready for certification and collection by the Parties, within the given 30 days.
- d. In the meantime, the Office of the Registrar E&LRC to look into the source of delay in supply of typed proceedings to Parties at the E&LRC Kericho, and take urgent remedial measures.
- e. A copy of this Ruling shall be availed to the Registrar of the Court, as soon as the Ruling is delivered.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, THIS 14TH DAY OF FEBRUARY 2025.

JAMES RIKA
JUDGE

