



**Race Guards Limited v Kisiangani (Appeal E154 of 2024)
[2025] KEELRC 1238 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1238 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E154 OF 2024
M MBARŪ, J
APRIL 30, 2025**

BETWEEN

RACE GUARDS LIMITED APPELLANT

AND

DIANAH LUNYOLO KISIANGANI RESPONDENT

RULING

1. The appellant filed an application dated 20 January 2025 under the provisions of article 159 of *the constitution*, sections 3, 3A and 95 of the *Civil Procedure Act* and Section 12(3) of the *Employment and Labour Relations Court Act*, seeking orders;
 1. Spent.
 2. The court be pleased to stay execution of any order and /or decree that is the consequence of and/or after its order made on 17 January 2025 dismissing and/or striking out the appeal herein;
 3. This court be pleased to review and/or set aside its orders made on 17 January 2025 to dismiss and/or strike out the appeal and reinstate the appeal with directions as to the hearing;
 4. The court will grant leave to file the Record of Appeal dated 22 November 2024 out of time, and upon leave being granted, it will be deemed duly filed.
 5. Costs of this application be provided for.
2. The application is supported by the affidavit of Lydia Muli, managing director, who avers that the appellant's default in filing the Record of Appeal by 19 November 2024 was due to circumstances beyond its control. The lower court's default in retrieving and tracing the file for the typing proceedings and certification was not done in time. Despite the appellant following up, the proceedings were not provided in time.



3. The appellant has obtained the typed proceedings, prepared the Record of Appeal, and sought a time extension to file and serve the same. The appeal is arguable, and the Record of Appeal is now ready. The appellant is prepared and willing to proceed and prosecute the appeal.
4. In reply, the respondent filed her Reply Affidavit and averred that on 23 September 2024, the appeal came up for directions and the court granted the appellant 14 days to file the Record of Appeal. There was no compliance, and on 7 October 2024, when the matter came up for mention, the appellant did not attend court. The Record of Appeal had not been filed. A show cause notice was issued for 5 November 2024, and the appeal will be dismissed in default. A mention date was allocated for 25 November 2025, and the court directed that the matter be placed for directions on 17 January 2025. There was no compliance, and no Record had been filed. Leading to the dismissal of the appeal.
5. The orders of 5 November 2025 have not been addressed. There is no review or setting aside. Moving to address the orders of 17 January 2025 without addressing the substantive orders of 5 November 2024 would be an abuse of the court process. The orders sought are not justified and should be dismissed with costs.
6. Both parties attended and filed skeleton submissions and made oral submissions in court. The application, affidavits, and submissions were analysed. The issue for determination is whether the court should review the order of 17 January 2025 dismissing the appeal.
7. The appellant filed the Memorandum of Appeal on 26 July 2024. The appeal relates to the judgment delivered on 27 June 2024 in Mombasa CMELRC No. E333 of 2024.
8. Under rule 15(1) of the *Employment and Labour Relations Court (Procedure) Rules*, a Memorandum of Appeal should be accompanied by a Record of Appeal including the Decree appealed against;
 1. A memorandum of appeal shall be accompanied by a record of appeal comprising a certified copy of the pleadings, the proceedings, any documentary evidence relied on, and the judgment ruling, decision, order, decree or award appealed against.
 2. ...
9. Where the appellant cannot file the Record of Appeal together with the Memorandum of Appeal, it should be filed within 60 days from the date the subject judgment appealed against was delivered.
 - (2) Where the record of appeal is not filed together with the memorandum of appeal, the appellant shall file the Record within sixty days from the date of delivery of the judgment, ruling, decision, order, decree or award appealed against.
10. In this case, the trial court delivered its judgment on 27 June 2024. The Record of Appeal should have been filed on or before 20 September 2024.
11. On 23 September 2024, parties attended court for directions, and the time to file the Record of Appeal was extended to 7 October 2024. There was no compliance. The time was extended to 23 October 2024 when the appellant remained absent and the Record of Appeal had not been filed. A notice to show cause was issued for attendance on 5 November 2024.
12. On the notice to show cause and the explanations given, the court allowed the appellant 14 more days to file the Record of Appeal; failure to do so would result in the appeal being closed on 20 November 2024.

There was no compliance.



13. The explanation is that the trial court failed to provide the typed proceedings in time. From 27 June 2024, when the trial court's judgment was delivered, the only record submitted in the Supporting Affidavit of Lydia Muli is the letter dated 21 August 2024 seeking typed proceedings.
14. Of interest are court directions on 7 October 2024. The court placed the file before the Deputy Registrar to assist the parties in obtaining the typed proceedings. Efforts to expedite the processing of the Record of Appeal. This chance was not utilised.
15. The provisions of rule 15 of the Court Rules are mandatory. In context, the leave sought to file the Record of Appeal out of time, the indulgence from 23 September 2024 to 5 November 2024, has not been utilized. The appellant cannot justify claiming they have been denied access to justice. Justice cuts both ways.
16. The respondent has a valid judgment of the trial court. The appellant has been provided sufficient time based on the law and the rules allowing for an appeal without adherence.
17. The application dated 20 January 2025 seeking to set aside the orders of 17 January 2025 on the background of orders issued on 5 November 2024, taking effect on 20 November 2024, is without merit and is dismissed. Costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF APRIL 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

