



**Oyieno & 16 others v Mitchell Cotts Freights (K) Ltd (Appeal
E045 of 2021) [2024] KEELRC 45 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 45 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E045 OF 2021
AK NZEI, J
JANUARY 25, 2024**

BETWEEN

DAVID OCHIENG OYIENO & 16 OTHERS APPELLANT

AND

MITCHELL COTTS FREIGHTS (K) LTD RESPONDENT

*(Being an appeal from the judgment and decree of the Principal Magistrate's Court
Mombasa (Hon. Lesootia Saitabau -PM) dated 23rd June 2021 in ELRC No. 529/2019)*

JUDGMENT

1. On 23rd July 2021, a memorandum of appeal, dated 21st July 2021, was filed herein. The Appellants are named as David Ochieng Oyieno and 16 others, and the appeal is shown to be against the judgment and decree of Mombasa Principal Magistrate (Hon. Lesootia Saitabau) dated 23rd June 2021 in the said Court's Employment No. 529 of 2019.
2. When the appeal came up for hearing on 7th June 2023, a date fixed by the Court on 13th February 2023, the Appellant's Counsel informed the Court that he had filed an incomplete record of appeal as the Appellant's were yet to get the lower Court's proceedings. He sought, and was ordered by the Court, to file and serve a supplementary record of appeal and written submissions on the appeal within thirty (30) days of the said date. The Respondent was ordered to file and serve written submissions within fourteen (14) days of being served by the Appellants.
3. The Appellants did Not comply with the aforesaid order, and the Court fixed the appeal for judgment.
4. I have perused the record of appeal filed herein on 20th May 2022, and true, the same does not contain the trial Court's proceedings.



5. Rule 8(4) of the Employment and Labour Relations Court (procedure) Rules 2016 provides as follows:-

“(4) A memorandum of appeal shall be accompanied by copies of the proceedings, all documentary evidence relied on and a copy of the judgment from the proceedings of the matter being appealed against.

Provided that where copies of proceedings are not filed with the memorandum of appeal, the Appellant shall file such copies as soon as possible and within a reasonable time.”

6. As already stated in this judgment, the Appellants’ memorandum of appeal was filed on 23rd July 2021 and as at 26th July 2023, the date on which the appeal was allocated a judgement date, the Appellants had not filed a copy of the trial Court’s proceedings, being proceedings of the matter being appealed against.

7. In the absence of the trial Court’s proceedings, there is absolutely nothing for this Court, being a first appellate Court, to review and to consider in determining the appeal herein. As stated in *Mursal & another -vs- Manese* [2022] eKLR;

“A first appellate Court is mandated to re-evaluate the evidence before the trial Court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate Court is empowered to subject the whole of the evidence to fresh and exhaustive scrutiny and to make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was stated in *Selle & Another -vs- Associates Motor Boat Co. Ltd & Another* [1968] E.A. 123 and in *Peters -vs- Sunday Post Ltd* [1958] E.A. page 424.”

8. The Appellants’ appeal herein is hollow and incompetent, and must therefore fail. The same is hereby dismissed. Each party will bear its costs of the appeal.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 25TH JANUARY 2024

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable

Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Appellant

.....Respondent

