



**Livoi v Sunpar Pharmaceuticals Ltd (Miscellaneous Case E203 of 2023)  
[2024] KEELRC 339 (KLR) (21 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 339 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS CASE E203 OF 2023  
DKN MARETE, J  
FEBRUARY 21, 2024**

**BETWEEN**

**CLIFFORD OTWERE LIVOI ..... APPLICANT**

**AND**

**SUNPAR PHARMACEUTICALS LTD ..... RESPONDENT**

**RULING**

1. This is an application dated 29th September, 2023 in which the applicant seeks leave to file an appeal out of time. He also prays for a provision for costs in the circumstances.

The Claimant/Applicant grounds of application basis that he always intended and was willing to appeal against the judgment in case cause No. E170 of 2021 but this was betrayed by his advocate’s dalliance leading to massive delay. This was despite agreements and assurance of expeditious launching of the appeal.

It is the Claimant/Applicant’s case that he was always agreeable on appealing and further that the misgivings of counsel should not be visited upon his client.

2. The Respondent in a Replying Affidavit sworn on 30th October, 2023 opposes the application and pray that the same is dismissed with costs.

It is the Respondent’s case that indeed, counsel for the applicant filed Appeal No. Miscellaneous ELRC E173 of 2021 – Clifford OtwereLivoi –vs- Sunpar pharmaceuticals Limited but this was indiligently prosecuted and ultimately his counsel withdrew the same on 3rd October, 2023 with no order on costs. The applicant is therefore misleading the court on material facts relating to the case and application.

3. The Applicant in his undated final submissions pleads for an allowance for this application so as to enable him pursue an appeal in the circumstances.



The Respondent in her written submission dated 10th January, 2024 vehemently opposes the application for being vexatious and misleading and therefore prays that this be dismissed with costs.

4. I agree with the Respondent. This application lacks basis and substance. This is because the Applicant/Appellant had truly brought out an appeal which was later withdrawn by his counsel. He therefore has no substantial ground for lodging this application in the circumstances. He cannot be unaware of the events leading to his case and if this be the case, he has not sought or attempted to answer this allegation by the Respondent.

The Respondent's case takes sway and favour in the circumstances.

I therefore inclined to dismiss the application with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 21ST DAY OF FEBRUARY 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Claimant/Applicant in person.

Mr Sigei holding brief for Njomo instructed by Kamotho Njomo & Co. Advocates for the Respondent.

