



**Munyili v CMC Motors Group Limited (Civil Appeal E086 of 2022)  
[2024] KEELRC 145 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 145 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CIVIL APPEAL E086 OF 2022**

**L NDOLO, J  
FEBRUARY 8, 2024**

**BETWEEN**

**JAMES MUTHAMA MUNYILI ..... APPELLANT**

**AND**

**CMC MOTORS GROUP LIMITED ..... RESPONDENT**

**RULING**

1. On 11<sup>th</sup> September 2023, the Appellant was served with a Notice to Show Cause why this appeal should not be dismissed for want of prosecution.
2. The Appellant responded to the Notice to Show Cause by an affidavit sworn by his Counsel, Kevin Onyango Omondi, on 26<sup>th</sup> September 2023.
3. Counsel depones that he has been in communication with the lower court Registry and has paid for typed proceedings twice. The proceedings have not been supplied hence the delay in filing the Record of Appeal.
4. The Respondent filed its own affidavit sworn by its Counsel, George Ogembo, on 1<sup>st</sup> December 2023.
5. Counsel depones that the Respondent was served with the Appellant's Memorandum of Appeal on 6<sup>th</sup> July 2022.
6. He points out that by virtue of order 42 rule 13(1) of the *Civil Procedure Rules*, the Appellant was required to set down the appeal for directions within 21 days after service of the Memorandum of Appeal. He adds that there is no provision in law requiring the Appellant to obtain typed proceedings before setting down the appeal for directions.
7. According to Counsel the Appellant is an indolent party who was prompted to action by the Notice to Show Cause.



8. From the record, the Appellant filed his Memorandum of Appeal on 4<sup>th</sup> July 2022. There is evidence that his Counsel on record not only paid for typed proceedings at the lower court but has also consistently followed up with that court, by way of written correspondence, for the proceedings to be availed. Such a party cannot be said to have been indolent.
9. Once an Appellant has filed a Memorandum of Appeal, the next step is to file a Record of Appeal upon which directions for filing of written submissions will be issued. A Record of Appeal must include the proceedings before the lower court. There is therefore no further step the Appellant could have taken without the proceedings at the lower court.
10. The delay in prosecuting this appeal cannot be assigned to the Appellant and the Notice to Show Cause was issued in error.
11. The Appellant is at liberty to file his Record of Appeal within seven (7) days after receipt of the typed proceedings from the lower Court.
12. The costs of these proceedings will be costs in the appeal.
13. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF FEBRUARY 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:-

Mr. Omondi for the Appellant

Mr. Ogembo for the Respondent

