



**Ready Consultancy Co Ltd v Genya & another (Appeal E044 of 2022)
[2024] KEELRC 162 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 162 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E044 OF 2022
AK NZEI, J
FEBRUARY 8, 2024**

BETWEEN

READY CONSULTANCY CO. LTD APPELLANT

AND

MATANO CHOMBO GENYA 1ST RESPONDENT

MOMBASA MAIZE MILLERS LTD 2ND RESPONDENT

(Being an appeal against the judgment of Hon. Lesootia Saitabau [Principal Magistrate] delivered on 6th May 2022 in CMC – ELR Case No. 786 of 2019- Mombasa)

JUDGMENT

1. The appeal herein is shown to have been instituted vide a memorandum of appeal dated 7/6/2022 and filed in this Court on even date. The appeal is expressed to be against the judgment of Hon. Lesootia SAitabau (Principal Magistrate) delivered at Mombasa on 6/5/2022 in Mombasa CMC ELR Case No. 786 of 2019.
2. The Appellant herein, Ready Consultancy Company Limited, is shown to have been the Third Party in the aforementioned lower Court suit (Mombasa CMC ELR Case No. 786 of 2019) whereby the 1st Respondent in this appeal (Matano Chombo Genya) had sued the 2nd Respondent herein (Mombasa Maize Millers Ltd) claiming:-
 - a. A declaration that termination of the 1st Respondent’s employment was unfair and unlawful.
 - b. 12 months’ salary in compensation for unfair and unlawful termination.....ksh. 187,200
 - c. Pay in lieu of noticeksh. 15,600



- d. Severance pay (ksh. 7,800x 2 years).....ksh. 15,600
 - e. Annual leave for 2 years workedksh. 31,200
 - f. House allowance (2 years worked@ 15%
ksh. 2,340X 12 months x 2).....ksh. 56,160
 - g. Certificate of service
 - h. Costs and interest at Court rates.
3. The 1st Respondent, being the Claimant in the said lower Court suit, had pleaded:-
- a. that he had been engaged by the 2nd Respondent as a loader from 9/3/2017, and that he retained continuous employment until 9/7/2019 when his services were terminated by the 2nd Respondent herein.
 - b. That the 1st Respondent’s initial and terminal earnings were ksh. 15,600 per month, and that termination of his employment was abrupt and unlawful, and contravened the provisions of Sections 41,43 and 44 of the *Employment Act* 2007. That the 2nd Respondent did not act in accordance with justice and equity in terminating his employment.
4. From what can be gathered from the incomplete record of appeal filed in this Court, the 2nd Respondent, who was the sole Respondent/defendant in the primary suit, filed response to the 1st Respondent’s claim/suit and subsequently took out Third Party proceedings against the Appellant. Judgment is shown to have been delivered against the Third Party (the Appellant herein) on 6/5/2022. The present appeal is shown to be against the said judgment. It is worthy noting that proceedings taken before the trial Court, which would ordinarily contain the evidence presented before the trial Court by the parties herein, were not included in the record of appeal filed in this Court by the Appellant; and that this Court has neither seen nor perused the same. The record of appeal is incomplete, and the appeal is incompetent.
5. There is no evidence before this Court for its review, re-evaluation and consideration this being a first appeal. As stated in *Mursal -vs Manese* [2022] eKLR:-
- “A first Appellate Court is mandated to re-evaluate the evidence presented before the trial Court as well as the judgment and to 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- Associated Motor Boat Co. Ltd & another* [1968] EA 123 and in *Peters -vs- Sunday Post Ltd* [1958] EA page 424.”
6. Echoing on the aforesaid conventional duty of a first appellate Court, Rule 8(4) of the *Employment and Labour Relations Court (Procedure) Rules 2016* provides as follows:-
- “A memorandum of appeal shall be accompanied by a copy 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.”



7. In any first appeal, proceedings of the trial Court are so pivotal such that the merits or otherwise of the appeal cannot be considered or determined without them.
8. In the absence of the trial Court's proceedings, there is absolutely nothing on record for this Court, being a first appellate Court, to review, to re-evaluate and to consider in determining the Appellant's appeal. The appeal is hollow and is incompetent and must, therefore, fail.
9. For record purposes, it is worthy noting that whereas the memorandum of appeal herein is shown to have been filed on 7/6/2022 without any accompanying documents pursuant to Rule 8(4) of this Court's Rules, the incomplete record of appeal was filed on 7/6/2023, one year down the line. The Appellant had all the time to present a complete record of appeal, but did not.
10. Having stated that, and having considered written submissions filed on behalf of the Appellant and the 1st Respondent, I hereby dismiss the Appellant's appeal for being incompetent. Each party will bear its own costs of the appeal.
11. The Court file shall be closed forthwith.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 8TH FEBRUARY 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.

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

