



REPUBLIC OF KENYA



KENYA LAW
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**Ready Consultancy Co Ltd v Thoya & another (Appeal E045 of 2022)
[2024] KEELRC 161 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 161 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E045 OF 2022
AK NZEI, J
FEBRUARY 8, 2024**

BETWEEN

READY CONSULTANCY CO LTD APPELLANT

AND

SAFARI BAYA THOYA 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. 788 of 2019- Mombasa)

JUDGMENT

1. The appeal herein was instituted vide a memorandum of appeal dated 7/6/2022 and filed in this Court on even date, and is expressed to be against the judgment of Hon. Lesootia Saitabau (Principal Magistrate) delivered on 6/5/2022 in Mombasa CMC ELR Case No 788 of 2019. The memorandum of appeal was filed unaccompanied by the documents referred to in Rule 8(4) of the Employment and Labour Relations Court (Procedure) Rules 2016, which provides as follows:-

“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.”

2. A compilation of the documents referred to in the foregoing sub-rule, and possibly other pertinent documents like the pleadings filed in the trial Court, is what is conventionally referred to as a record of appeal.



3. When the appeal herein was first placed before me on 29/9/2022, Counsel for the Appellant sought, and was granted by the Court, twenty one (21) days to file and serve a record of appeal. No record of appeal was filed, and the Appellant was on 26/10/2022 granted 30 more days to file and to serve a record of appeal. On 7/6/2023, Counsel appearing for the Appellant informed the Court that he had electronically filed an incomplete record of appeal as he had not been furnished with the trial Court's proceedings, and successfully sought to be granted 30 more days to file a supplementary record of appeal and written submissions on the appeal.
4. The Court has since confirmed with its Registry that no record of appeal, complete or incomplete, was ever filed in the appeal herein, electronically or physically. The Court has also confirmed with its Registry that no supplementary record of appeal was ever filed in the appeal herein, physically or electronically. Be that as it may.
5. In the absence of the proceedings and evidence taken before the trial court, the trial court's Judgment and pleadings forming the basis of the trial giving rise to the alleged impugned judgment, there is absolutely nothing before this court to consider. The appeal herein is incompetent, and is hereby dismissed.
6. Each party will bear its own costs of the appeal.
7. The Court file shall forthwith be closed.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 8TH FEBRUARY 2024

AGNES KITIKU NZEI

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

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.

Appearance:

.....Appellant

.....Respondent

