



**Jesmiel v Mwirua Farmers Cooperative Society Ltd (Miscellaneous Case
224 of 2023) [2024] KEELRC 625 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 625 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CASE 224 OF 2023
AN MWAURE, J
MARCH 20, 2024**

BETWEEN

PAUL WACHIRA JESMIEL APPLICANT

AND

MWIRUA FARMERS COOPERATIVE SOCIETY LTD RESPONDENT

RULING

1. The Applicant/Appellant filed a Notice of Motion dated 1st March 2023, seeking orders that:
 1. spent
 2. leave be granted to the Applicant/Appellant to commence the proceedings of the intended appeal with the exemption from paying court fees.
 3. the Applicant proposed notice of appeal and memorandum of appeal be adopted as the plaint in the intended appeal.
 4. The Applicant herein is not possessed with any means which to pay the court fee.
 5. The Applicant/Appellant constitutional interest of access to justice under the provisions of Article 48 of *the Constitution*, this application be allowed.

Applicant/Appellant's Case

2. The Applicant/Appellant avers that he requested the ELRC Court in Nyeri to allocate this matter to another ELRC judge to hear and determine the same as he had no confidence in Hon. Justice Onesmus Makau.



3. The Applicant/Appellant avers that on 12.10.2023, Hon. Lady Justice Anna Mwaure Of ELRC in Nairobi allowed him to amend the parties to the Application from Paul Wachira Jesmiel v Paul Wachira Jesmiel to Paul Wachira Jesmiel v Mwirua Farmers Co-operative Society Ltd.
4. The Applicant/Appellant avers that he is a layman/ pauper and does not possess sufficient means to enable him pay the court fees of the intended appeal at Nyeri.
5. The Applicant/Appellant avers that he was unlawfully summarily dismissed from employment without legal procedure process and without payment of salary arrears, terminal benefits.
6. The Applicant/Appellant avers that the intended appeal has a high probability of success.
7. The Applicant/Appellant avers that he does not possess any movable or immovable property and he has spent the resources saved from employment on psychological/mental treatment that he suffered because of the unlawful summary dismissal.
8. The Applicant/Appellant avers that the court uses the receipt of Ksh 3,750 filed wrongly at Kerugoya High Court instead of Nyeri ELRC on 06.04.2023.

Analysis and Determination

9. The main issue for determination is whether the Applicant/ Appellant is entitled to leave to this suit as a pauper.
10. Order 33 Rule 1 (2) of the [Civil Procedure Rules](#) describes a pauper as:

“For the purposes of this Order a person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the institutions of such suit.”

11. Pauper appeals are provided for under Order 44 of the [Civil Procedure Rules](#) as follows:

“Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject in all matters, including the presentation of such application, to the provisions relating to suits by paupers in so far as those provisions are applicable:

Provided that the court shall dismiss the application unless upon a perusal of the memorandum of appeal and of the record of the lower court, it sees reason to think that the decree is contrary to law, or against the weight of the evidence.

2. Inquiry into pauperism [Order 44, rule 2]

The inquiry into the pauperism of the applicant may be made either by the High Court or under the orders of the High Court by the court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the High Court sees cause to direct such inquiry.”



12. The Applicant/Appellant has only attached a draft memorandum of appeal and a notice of appeal dated 27th January 2023. The judgment being appealed against is dated 26th January 2023. Order 42 Rule 1 clearly sets out the form of an appeal as follows:

- “(1) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading. It is not clear if it is filed in court as is only a draft dated 27th January 2023.
- (2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.”

13. The law provides in order 44 Rule 1 that the court shall dismiss the application unless upon perusal of the memorandum of appeal and of the record of the lower court. If it sees reason to think that decree is contrary to law or against the weight of evidence. There is a draft memorandum of appeal.

14. Considering the appellant is a layperson and his submissions that he is unable to raise money for this appeal the court will exercise its discretion and grant him exemption not to pay court fees.

15. Then he will need to attach the record of appeal and the proceedings of the lower court. The draft memorandum of appeal dated 27th January 2023 is deemed as duly filed and record of appeal to be filed and served within 21 days

16. Costs are in the intended appeal hereof.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20TH DAY OF MARCH, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159 (2) (d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

