



**Juma v Cello Thermoware Limited (Appeal E067 of 2023)
[2024] KEELRC 531 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 531 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E067 OF 2023**

**AK NZEI, J
MARCH 7, 2024**

BETWEEN

OMAR OSMAN JUMA APPELLANT

AND

CELLO THERMOWARE LIMITED RESPONDENT

*(Being an appeal against the whole judgment of Hon. Maureen L. Nabibya
– SPM in Mombasa CM-ELR No. E227/2021 delivered on 22nd June 2023)*

RULING

1. The application before me is the Respondent’s Notice of Motion dated August 10, 2023 and expressed to be brought under Sections 1A and 3A of the *Civil Procedure Act*, Order 51, and Order 42 Rules 14(1) & (3) of the *Civil procedure Rules*. The Respondent/Applicant seeks orders:-
 - a. that the Appellant herein be ordered to give security for costs of kshs. 209,575 or any other sum the Court may deem fit into a joint interest earning account to be opened by the Advocates herein as security for the costs of the appeal within thirty (30) days of the order.
 - b. that in default of compliance with order (1) above, this appeal shall stand dismissed on expiry of thirty (30) days of the Order.
 - c. that costs of the application be provided for.
2. The application is based on the supporting affidavit of Amit Ashok Doshi sworn on August 10, 2023. It is deponed in the said affidavit that the Appellant’s suit in the lower Court, whereby he was claiming kshs. 5,583,020 against the Respondent/Applicant herein, was dismissed for lack of merit. That the claimant is unemployed and is of an advanced age, and has no known assets which would satisfy an order for costs if such an order is ultimately made in favour of the Respondent.



3. It is further deponed on behalf of the Respondent/Applicant that the Appellant/Respondent will not be able to pay costs that may be awarded to the Respondent/Applicant, hence the necessity for security for costs to be furnished by the Appellant/Respondent.
4. The application is opposed by the Appellant vide a replying affidavit sworn by him on 26/9/2023 whereby the Appellant depones:-
 - a. that he was unfairly dismissed from work by the Respondent/Applicant, and that the Appellant's suit whereby he claimed terminal dues was dismissed by the trial Court for the reason that the Appellant was over 60 years.
 - b. that there is no law that prevents an employee from suing an employer even after attaining 60 years; and that the appeal herein is meant to cure the injustice done by the trial Court.
 - c. that the Appellant is now 67 years old and unemployed since the Respondent terminated his employment in 2021; is of ill health and is unable to afford the kshs. 209,575 sought to be deposited.
5. It is worthy noting that the Rules of procedure applicable to proceedings in this Court are the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#), except where particular provisions of the [Civil Procedure Rules](#) are saved into this Court's said [Rules](#). In situations where this [Court's Rules](#) are silent on any particular matter of procedure, this Court has, over the years, turned to the [Civil Procedure Rules](#) for guidance.
6. Section 12(4) of the [Employment and Labour Relations Court Act](#) provides as follows:-

“(4) In proceedings under this [Act](#), the Court may, subject to the rules, make such orders as to costs as the Court considers just.”
7. Rule 29(1) & (2) of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#) provides as follows:-
 - (1) The Court shall be guided by Section 12(4) of the [Employment and Labour Relations Court Act](#) and the [Advocates \(Remuneration\) Order](#) in awarding costs.
 - (2) The Court may order reasonable reimbursements of money spent by litigants in the course of litigation.”
8. It is clear from the wording of the forgoing provisions of both the statute and this [Court's Rules](#) of procedure that the issue of costs is a matter that is within the Court's discretion. I am alive to the fact that judicial discretion must always be exercised Judiciously, and always in the interest of justice. The Appellant has deponed that he is unemployed and struggling with ill health, and therefore unable to afford the kshs. 209,575 which the Respondent seeks to have deposited in a joint interest account as a condition to the appeal proceeding, and to being considered by the Court.
9. All that a worker/employee sells in the labour market for his survival is labour, and if and when his or her employment is terminated, for whatever reason, such a worker/employee may find himself with no means of survival, leave alone ability to furnish security for costs. Labour and employment litigation belongs to a special category of litigation, conducted before a specialized Court established specifically to handle employment and labour relations matters. This [Court's Rules](#) of procedure are specifically tailored to suit the specialized nature of the Court and the nature of litigation conducted before it.



The Rules have given the Court a wide discretion in matters procedure in the conduct of proceedings before it.

10. I am satisfied that granting the present application will be tantamount to denying the Appellant an opportunity to argue or to present his appeal, whatever its worth; in view of his depositions herein. The depositions have not been controverted by the Respondent/Applicant. The appeal shall be prosecuted, and shall be determined on merit.
11. I find no merit in the Notice of Motion dated 10/8/2023, and the same is hereby dismissed. Each party will bear its own costs of the application.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 7TH MARCH 2024

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

