



**P.J Dave Flora Limited v Everline Majuma Wanjala (Civil Appeal
57 of 2018) [2024] KEELRC 1308 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1308 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL APPEAL 57 OF 2018**

L NDOLO, J

MAY 30, 2024

BETWEEN

P.J DAVE FLORA LIMITED APPELLANT

AND

EVERLINE MAJUMA WANJALA RESPONDENT

RULING

1. By her notice of motion dated February 7, 2024, the respondent seeks dismissal of the appellant’s appeal and an order directing that the decretal sum deposited in account number xxx held at Prime Bank, Kenindia Branch, be released to the Respondent’s Advocates.
2. The Motion is supported by an affidavit sworn by the respondent’s Counsel, Morris J. Kisia and is based on the following grounds:
 - a. That the appellant has failed to compile and file a Record of Appeal as directed by the Court;
 - b. That the appellant has not taken any steps to facilitate the disposal of the appeal, thus abusing the court process;
 - c. That the appeal is frivolous and lacks merit;
 - d. That it is in the interest of justice that the orders sought be granted.
3. The appellant opposes the application by a replying affidavit sworn by its counsel, Kennedy Modi on March 5, 2024.
4. Counsel depones that delay in compiling and filing the Record of Appeal has been occasioned by failure by registry officials at Kajiado Law Courts to avail typed and certified proceedings in Kajiado CMCC No 512 of 2016, citing lack of sufficient personnel to handle the request for proceedings.



5. He points out that it has been over seven (7) months since a formal request for proceedings was lodged at Kajiado Law Courts, adding that the request was yet to be met.
6. Counsel further depones that he had written a protest letter on the inordinate delay occasioned by staff at the registry but no action had been taken. He states that the delay has been caused by factors beyond his control.
7. In pursuing her application, the Respondent relies on rule 8(4) of the *Employment and Labour Relations Court (Procedure) Rules*, which provides that:
 - (4) 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.
8. On its part, the Appellant relies on order 42 rule 35(1) and (2) of the *Civil Procedure Rules*, which provides as follows:
 1. Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.
 2. If within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.
9. The Appellant further relies on the decision in *Pinpoint Solutions Limited & another v Lucy Waithegeni Wanderi (as the Legal Administrator of the Estate of James Nyanga Muchangi)* [2020] eKLR where it was held that directions must have been given before an appeal can be dismissed for want of prosecution.
10. By my ruling dated July 27, 2023, I granted leave to the appellant to file its appeal out of time and directed the appellant to file a record of appeal within 60 days from the date of the ruling.
11. There is evidence on record that the Appellant wrote to the trial court on August 7, 2023 and November 20, 2023, asking for typed proceedings to enable it file the Record of Appeal. There appears to have been no response to the Appellant's request and because a Record of Appeal cannot be filed without the trial proceedings, the delay cannot be assigned to the Appellant.
12. For this reason, I decline to grant the respondent's plea for dismissal of the appeal. However, in light of the age of this matter, I direct that the record appeal shall be filed within the next thirty (30) days from the date of this ruling, failing which the appeal shall stand dismissed without any further orders.
13. The costs of the application will be costs in the appeal.
14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY MAY, 2024.

LINNET NDOLO

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JUDGE



I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Appearance:

Mr. Modi for the Appellant

Mr. Kisia for the Respondent

