



**Mass Energy v Meri (Appeal E001 of 2023)
[2024] KEELRC 13642 (KLR) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13642 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E001 OF 2023**

**AK NZEI, J
MAY 23, 2024**

BETWEEN

MASS ENERGY APPLICANT

AND

KUMBO MERI RESPONDENT

*(Being an appeal against the Ruling and Orders of Hon. D.O. Mbeja, -
SRM delivered on 29/12/2022 in Msa CM -ELR Cause No. E262 of 2021)*

JUDGMENT

1. The appeal herein is shown to have been instituted vide a memorandum of appeal dated 11/1/2023 and filed in this Court on 12/11/2023. It is shown to be an appeal “against the Ruling and Orders” of D.O. Mbeja – SRM delivered on 29/12/2022 in Mombasa Chief Magistrate’s Court Employment Case No. E262 of 2021. When the appeal came up for hearing on 28th September 2023, this Court made the following orders:-

- “(1) Having heard Counsel for both parties, I reluctantly take out the appeal from today’s hearing list and I adjourn the same.
- (2) The Appellant is given a final opportunity to file a complete record of appeal within 30 days of today.
- (3) Hearing of the appeal shall proceed on 6/11/2023, with or without a record of appeal.
- (4) Cases belong to parties, and once an Appellant files an appeal, it behoves that party to file the necessary documents, either as per the Rules of procedure or as ordered by the Court.



- (5) This Court's process will not be held hostage on account of proceedings going on in other Courts.
- (6) there will be no further adjournments."

2. On 6th November 2023, Mr. Ngonze, Learned Counsel for the Appellant, informed the Court that he had filed an incomplete record of appeal, and was on 4th December 2023 allowed fourteen more days to put the record of appeal in order. The Court fixed the appeal for mention on 5th February 2023 for purposes of fixing a judgment date, directions on filing of written submissions on the appeal having been given. On 5th February 2024, the appeal was fixed for judgment on 23rd May 2024.

3. I have perused the record of appeal shown to have been filed by the Appellant on 6th November 2023. The said record of appeal is a bundle of copies of documents paginated by hand from page 1 to 195. I have perused the said record of appeal and I have noted that the same does not include the trial Court's proceedings and an extracted order from the Ruling delivered by the trial Court on 29th December 2022 which is the decision appealed against. Rule 8(4) of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows:-

"(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.

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."

4. In view of the foregoing mandatory provisions of this Court's Rules, the record of appeal filed by the Appellant herein is incomplete and therefore incompetent, this despite the fact that the Appellant had, from the date of filing the memorandum of appeal, more than a year to file a record of appeal that accords with the aforestated legal requirements.

5. Without the trial Court's proceedings, there is absolutely nothing that this Court, being a first appellate Court; can re-evaluate and consider afresh. The duty of a first appellate Court is well settled; and was restated as follows in MURSAL & ANOTHER -VS- MUNENE (suing as the legal administrator of Daphine Kanini Manesa) [2022] eKLR:-

"A first appellate Court is mandated to re-evaluate the evidence before the trial Court as well as the judgment and 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."

6. As already stated herein, the record filed by the Appellant is incomplete, and there is nothing on record herein for this Court to evaluate and to consider before making its own decision on whether or not to allow the appeal. Proceedings of a trial Court not only present before a first appellate Court the evidence presented before the trial Court, but also a record on how proceedings in the trial Court were conducted. It is from the trial Court's proceedings that a first appellate Court can pick out procedural irregularities, illegalities, errors, mistake, unfairness or even impartiality, if any. An appeal that is presented without the trial Court's proceedings is outrightly incompetent.



7. It is my finding that the Appellant's appeal herein is incompetent; and the same is hereby struck off with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 23RD MAY 202

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.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Appellant

.....Respondent

