



**Mwema v Brothershirts Factory Limited (Appeal E217 of 2022)  
[2024] KEELRC 1453 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1453 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E217 OF 2022**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN**

**VERONICA KAMBUA MWEMA ..... APPELLANT**

**AND**

**BROTHERSHIRTS FACTORY LIMITED ..... RESPONDENT**

**RULING**

1. The Appellant's Claim in Milimani CM E&LRC Cause No. 2014 of 2021, against the Respondent, was dismissed in a Judgment dated 11<sup>th</sup> November 2022.
2. The Appellant filed this Appeal, through a Memorandum of Appeal, on 9<sup>th</sup> December 2022.
3. Parties agree that the Appeal was filed on time, but that service was not effected upon the Respondent on time, in accordance with Order 42 Rule 12 of the [Civil Procedure Rules](#).
4. The Respondent therefore applies, through an Application dated 24<sup>th</sup> November 2023, that the Memorandum of Appeal is struck out. The Application is supported by the Affidavit of Veronica Wanza, a Supervisor at the Respondent, sworn on 24<sup>th</sup> November 2023. Wanza restates the history on the filing and non-service of the Memorandum of Appeal, which is not contested.
5. The Appellant replies through an Affidavit she swore on 13<sup>th</sup> February 2024. She does not dispute that she served her Memorandum of Appeal upon the Respondent on 17<sup>th</sup> October 2023, 10 months after filing. She concedes that the law requires her to serve, within 7 days. She states that late filing was not intentional. She explains that there was a change of clerks at her Advocates' chambers, which occasioned delay in service. The mistake of her Advocates should not be visited upon her. She prays that her Appeal is heard on merit.
6. Parties agreed to have the Application heard and determined on the strength of their affidavits and submissions. They confirmed filing and service of submissions, at the last mention, on 4<sup>th</sup> April 2024.



**The Court Finds: -**

7. Parties agree that the Appellant served her Memorandum of Appeal late, by 10 months. The law requires service, within 7 days of filing.
8. 10 months, seen against the requirement for service within 7 days, is inordinate delay.
9. The explanation about change of clerks, in the Appellant's Advocates' chambers, occasioning delay in service, is not a persuasive explanation.
10. The Appellant's Affidavit has not given details of clerks who were assigned the role of service, and when they left the Appellant's Advocates' employment. It is not even shown that such clerks were ever employed by the Appellant's Advocates. There is no Affidavit sworn by the Appellant's Advocates or their clerks, confirming the reasons given by the Appellant for delay in service of her Memorandum of Appeal. The Appellant just relays information supplied by her Advocates to the Court.
11. The Court is not satisfied with the explanation given by the Appellant for delay in service of her Memorandum of Appeal. The default of 10 months, is hard to explain, given the expanded modes of service of court documents, which now include e-mail and social media. It was possible for the Appellant to serve the Respondent, at the click of a button. Delay was inordinate, and has held up the prosecution and conclusion of the Appeal.

It is ordered : -

- a. The Memorandum of Appeal is hereby struck out
- b. No order on the costs.
- c. This file is closed.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

