



**Twaweza Apparel (EPZ) Limited v Okoth & another (Appeal
E012 of 2024) [2024] KEELRC 1558 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1558 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E012 OF 2024
M MBARÚ, J
JUNE 13, 2024**

BETWEEN

TWAVEZA APPAREL (EPZ) LIMITED APPELLANT

AND

PAULINE ADHIAMBO OKOTH 1ST RESPONDENT

HANTEX GARMENTS (EPZ) LIMITED 2ND RESPONDENT

RULING

1. The appellant filed an application dated 3 May 2024 seeking an order;
 - a. This court be pleased to set aside the order made on 29/5/2023 and issued on 19/3/2024 dismissing the appeal.
 - b. The appeal be reinstated and fixed for directions
 - c. Costs of this application be provided.

The application is supported by the affidavit of Mwai Wajohi who aver that he is the advocate for the appellant with authority to support the application.

2. On 30 March 2023, this appeal was fixed for mention on 17 May 2023 by the court. No notice was served.
3. On the due date, 17 May 2023 the matter was mentioned in court and the parties were absent. The court ordered another mention on 29 May 2023 but no notices were served upon the parties. A show cause notice was issued for 29 May 2023 where both parties remained absent since no notice was served and the court dismissed the appeal for want of attendance.
4. Wanjohi aver that under article 50(1) of the *Constitution* parties have a right to a fair hearing and without being served with notice when the matter came up in court did not know that the matter



was in court and that adverse orders were issued. The appellant only discovered that the appeal had been dismissed on 17 April 2024 when auctioneers were instructed to proclaim its property following a decree issued on 18 January 2024. The auctioneers indicated there was no appeal as the same had been dismissed hence this application seeks the court to reinstate the appeal as the appellant did not know the matters coming up in court as no notices were served. The appellant will be prejudiced if the orders sought are not issued.

5. In reply, the 1st respondent filed a Replying Affidavit and aver that a claim was filed seeking payment of terminal dues against the appellant. The claim was heard and judgment delivered on 8 September 2021. The 2nd respondent failed to settle the decretal sum and execution proceedings were filed, a Notice of Objections dated 1st December 2021 was filed and in a ruling delivered on 17 June 2022 the court dismissed the objections on the ground that they had failed to prove that they were a spate legal entity from the 2nd respondent. She proceeded with execution against the appellant and the 2nd respondent.
6. The 1st respondent aver that the appellant filed this appeal on 14 February 2023 but failed to take any step to prosecute it leading to dismissal for want of attendance. The court issued several notices but the appellant failed to attend to address and cannot justify the non-attendance and the application before the court should be dismissed to allow the 1st respondent to proceed with execution proceedings.

Parties attended and agreed to rely on the filed affidavits.

Determination

7. On 14 February 2023, the appellant filed a Memorandum of Appeal dated 2 February 2023.
8. The Memorandum of Appeal relates to a judgement delivered on 17 June 2022 in Mombasa CMELRC No.331 of 2019.
No Record of Appeal has been filed since.
9. The matter was placed before court on 17 May 2023 and both parties were absent. The court directed that a notice to show cause be issued for 29 May 2023 and parties to attend on 29 May 2023 where parties remained absent. The court dismissed the appeal for want of attendance.
10. The issue by the appellant is that notices were not served to attend court. Indeed, this lapse in the issuance of court notices for 17 and 29 May 2023 is correct. The court should and ought to have served notices to the parties upon the Court Orders on these dates. None issued.
11. Indeed, article 47 of the Constitution requires that before an adverse action is taken, written notice should be issued. In this case, the court ought to have administratively addressed and a notice issued to the parties before the matter was dismissed for want of attendance.
The appellant is not without blame.
12. Save for filing the instant appeal, no action has been taken until the court on its opinion brought up the matter for dismissal.
13. As noted above, save for the Memorandum of Appeal, the appellant has done nothing to secure its rights or comply with rule 8 of the *Employment and Labour Relations Court (Procedure) Rules, 2016*. The appellant cannot take a stand that this matter will only proceed at their own appointed time given the judgment delivered by the trial court on 17 June 2022 and the appeal filed on 14 February 2023.
14. Inaction on the part of the appellant since filing the appeal is not explained or justified and cannot be found to claim costs for this application. The appellant was only moved by the 1st respondent upon execution proceedings. Had this not happened, the appellant would have not demonstrated any



interest in the appeal at all. The appellant is taking back everyone and should meet costs due to the 1st respondent assessed at Ksh. 10,000 to be paid within 14 days.

15. The appellant is now keen to prosecute the appeal, the court will seize the moment and allocate hearing directions. At the first point of the call, parties will address the court on the provisions of rule 8 of the *Employment and Labour Relations Court (Procedure) Rules, 2016*.

16. Given no notice having been issued to the parties, in the interests of justice, the orders sought shall be conditionally issued.

The appeal herein is reinstated.

The appellant is to pay the 1st respondent Ksh. 10,000 for its costs.

17. Attend court on 17 June 2024 where both parties will address the court on the provisions of section 17 of the *Employment and Labour Relations Court Act, 2011* and rule 8 of the *Employment and Labour Relations Court (Procedure) Rules, 2016*.

DELIVERED IN OPEN COURT AT MOMBASA THIS 13TH DAY OF JUNE 2024.

M. MBARŪ

JUDGE

In the presence of:-

Court Assistant: Japhet

..... and

