



**Kusimba v Navisat Telematics Limited (Cause E016 of 2021)  
[2024] KEELRC 13577 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13577 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E016 OF 2021  
AK NZEI, J  
DECEMBER 17, 2024**

**BETWEEN**

**CELESTINE KUSIMBA ..... CLAIMANT**

**AND**

**NAVISAT TELEMATICS LIMITED ..... RESPONDENT**

**RULING**

1. The Application before me is the Respondent's Notice of Motion dated 8<sup>th</sup> July, 2024. The Respondent/Applicant seeks the following orders at this stage:-
  - a. That pending hearing and determination of the intended appeal herein, an order do issue staying execution of the entire Judgment and decree delivered on 10<sup>th</sup> November, 2022 by the Honourable Lady Justice M. K. Nzei in Mombasa Employment and Labour Relations Cause No. E016 of 2021.
  - b. That the court be pleased to grant the applicant leave to appeal out of time and/or allow extension of time to file an appeal against the Judgment and decree delivered on 10<sup>th</sup> November, 2022 by the Honourable Lady Justice Agnes M. K. Nzei in Mombasa Employment and Labour Relations Court Cause No. E016 of 2021.
  - c. That the Court be pleased to grant the Applicant stay of execution of the Ruling delivered on 29<sup>th</sup> February, 2024 on the bill of costs dated 23<sup>rd</sup> November, 2022.
2. The application is expressed to be brought under Rules 5(2)(b), 41, 47, 75 and 82(1) and (2) of the Court of Appeal Rules, Sections 3A and 3B of the *Appellate Jurisdiction Act*, Order 51 Rule 1 of the Civil Procedure Rules 2010, Sections 1A and 1B of the *Civil Procedure Act* and Article 159(2) of *the Constitution* of Kenya; and is based on a supporting affidavit shown to be of Walter Mbindyo and indicated to be sworn by Fatma Taj Nanji on 12<sup>th</sup> July, 2024. In view of this apparent mix-up on the



part of the Respondent/Applicant, it is not possible to tell whether the signature appended to the said affidavit's jurat is that of Walter Mbindyo or that of Fatma Taj Nanji.

3. It is stated on the face of the application:-
  - a. that being dissatisfied with the High Court's decision, the applicant intends to appeal, and that the appeal raises triable issues.
  - b. that the Respondent has extracted a decree and that there being no stay, execution is imminent.
  - c. that the applicant is able, willing and ready to provide security as will be ordered by the court.
  - d. that the applicant is not in a position to know what resources the Respondent has at her disposal, and that in the event the [intended] appeal succeeds, it will be rendered nugatory as she (the Respondent) will not be able to repay the sum paid.
  - e. that the timeframe for filing an appeal lapsed, and there is need for the court to enlarge time to allow the applicant to file an appeal out of time, and to order for a stay of execution pending hearing and determination of both the application and the appeal.
4. Documents annexed to the aforesaid "supporting affidavit" include a draft notice of appeal dated 4<sup>th</sup> July, 2024, an extracted decree of this court, the Taxing Officer's Ruling on taxation of the Claimant/Respondent's bill of costs, an application for execution of decree, warrants of attachment and warrants of sale and a draft memorandum of appeal.
5. The application is opposed by the Claimant/Respondent vide her replying affidavit sworn on 19<sup>th</sup> July, 2024 and evenly dated grounds of opposition.
6. It ought to be noted, right from the onset, that there is no proper application before this court. Rule 47 of the Employment and Labour Relations Court (Procedure) Rules 2024, and which echoes the earlier rules, provides as follows:-

"A notice of motion shall state in general terms the grounds of the application and where the motion is supported by an affidavit, both the notice of motion and a copy of the affidavit shall be served on the other party."
7. As already stated in this Ruling, the deponent of the purported "supporting affidavit" filed alongside the Notice of Motion herein is not identifiable, as contemplated in Section 17 of the [Oaths and Statutory Declarations Act](#) (Cap 15 Laws of Kenya), which provides that oaths and affirmations shall be made by persons who may lawfully be examined or give evidence if so required by or before any court. The purported supporting affidavit filed herein is indicated to be of one person, and is shown to be sworn by a different person. If examination on oath regarding such a document was to be ordered, who would be summoned." The purported supporting affidavit is invalid, and without it the Notice of Motion dated 8<sup>th</sup> July, 2024 becomes incompetent.
8. For record purposes, this Court's Judgment in issue was delivered on 10<sup>th</sup> November, 2022. Any party aggrieved by the said Judgment ought to have lodged (filed) a Notice of Appeal in this Court's Registry within 14 days of the Judgment pursuant to the Court of Appeal Rules; and to have filed a record of appeal in the said Court's Registry within sixty days of filing the notice of appeal. None of the parties herein filed a notice of appeal.
9. The Respondent/Applicant now seeks to move this Court under the [Appellate Jurisdiction Act](#), to extend time for filing an appeal. Jurisdiction under the said law can only be exercised by the Court of Appeal, but not by this Court. This Court is without Jurisdiction to either exercise the Jurisdiction



that the Respondent seeks to invoke or to grant the Orders sought. The Notice of Motion dated 8<sup>th</sup> July, 2024 must fail, and is hereby dismissed with costs.

10. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF DECEMBER 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**

Appearance:

.....Claimant

.....Respondent

