



REPUBLIC OF KENYA



**Nyandika v Inter Security Services (Appeal E048 of 2021)  
[2023] KEELRC 328 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 328 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E048 OF 2021  
AK NZEI, J  
FEBRUARY 9, 2023**

**BETWEEN**

**EUCABETH KERUBO NYANDIKA ..... APPELLANT**

**AND**

**INTER SECURITY SERVICES ..... RESPONDENT**

*(Being an appeal on the whole of the judgment delivered by Hon. F.N. Kyambia  
at Mombasa on 23rd day of July 2021 in ELRC MCC NO. 933 of 2019.)*

**RULING**

1. When the appeal herein came up for direction on June 15, 2022, counsel for the appellant told the court that the appellant had filed a complete record of appeal. The court directed that the appeal be canvassed by way of written submissions, and directed counsel for both parties to file written submissions within specific timelines. Submissions were subsequently filed and a date for delivery of the court's judgment was reserved.
2. The court noted, during the judgment writing, that the record of appeal as filed by the appellant is incomplete as some pages of the trial court's proceedings appear to have been left out; as they are not part of the duly bound record of appeal filed in this court.
3. The trial court's typed proceedings are shown to be contained in fifteen pages, but pages 6 of 15 (containing part of the claimant's evidence in chief and evidence given under cross-examination), pages 8 of 15 and 10 of 15 (containing the respondent's evidence in chief), page 12 of 15 (containing part of the respondent's evidence under cross examination) and page 14 of 15 are not included in the bound record of appeal filed in this court on April 12, 2022.
4. The trial court's original record/file is not before this court as the *Employment and Labour Relations Court (Procedure) Rules* 2016 do not provide for forwarding to this court of the trial court's original



record. Indeed, rule 8(4) of the *Employment and Labour Relations Court (Procedure) Rules* 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.”

5. This court finds itself in a situation where it cannot complete writing its judgment as all the evidence adduced before the trial court is not before it. An appellant is obligated to compile and to file a complete and duly paginated record, while the respondent has a duty to peruse the record of appeal served on it to ensure its completeness.
6. In view of the foregoing, the orders scheduling the appeal herein for judgment are hereby recalled. I proceed to give the following orders:-
  - a. The appellant shall file and serve a complete record of appeal within fourteen days of this ruling.
  - b. Mention on March 9, 2023 to fix a fresh date for delivery of judgment.
7. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9<sup>TH</sup> FEBRUARY 2023**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....for Appellant

..... for Respondent

