



**Mash East Africa Limited v Ibrahim (Appeal E029 of 2021)
[2023] KEELRC 1116 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1116 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E029 OF 2021**

**AK NZEI, J
MAY 4, 2023**

BETWEEN

MASH EAST AFRICA LIMITED APPELLANT

AND

HUSSEIN MPATA IBRAHIM RESPONDENT

RULING

1. The appeal herein is shown to have been filed in this court on May 27, 2021 when a memorandum of appeal was filed. No action is shown to have been taken towards prosecution of the appeal. Documents that ought to have accompanied the memorandum of appeal pursuant to rule 8(4) of the *Employment and Labour Relations Court (Procedure) Rules 2016* were never filed.
2. On January 25, 2023, this court's Deputy Registrar issued a written notice to both parties under rule 16 of the *Employment and Labour Relations Court (Procedure) Rules 2016*, calling upon them to attend court on 20th February and show cause why the appeal could not be dismissed for want of prosecution. Rule 16 of the *Employment and Labour Relations Court Procedure Rules* provides as follows:-
 1. "In any suit where no application has been made in accordance with rule 15 or no action has been taken by either party within one year from the date of filing, the court may give notice in writing to the parties to show cause why the suit should not be dismissed and if no reasonable cause is shown to its satisfaction, may dismiss the suit.
 2. If reasonable cause is given to the satisfaction of the court, it may make such orders as it thinks fit to obtain the expeditious hearing and determination of the suit.
 3. Any party to the suit may apply for dismissal as provided in paragraph (1).



4. The court may dismiss the suit for non-compliance with any direction given under this rule.”
3. The word suit as used in the said rule includes an appeal. When the appeal came up for the notice to show cause on February 20, 2023, counsel for the appellant informed the court that they had filed an affidavit in response to the notice to show cause, and requested the court to give a date for ruling. Counsel for the respondent told the court that he did not intend to file any affidavit in response to the notice to show cause, and asked the court to give a date for ruling.
4. It is deponed in the replying affidavit of Michael Odhiambo Oloo Advocate, sworn on February 7, 2023, that although the appellant applied for certified copies of the trial court’s proceedings way back on June 25, 2021 to enable the appellant to compile a record of appeal, the trail magistrate, Hon Lesootia, remains in possession of the physical court file since September 30, 2021 as the matter pends delivery of a ruling on an application for stay of execution. This position was not controverted by the respondent.
5. The foregoing situation, which I would say is rather unusual, appears to have held back the wheels of justice regarding the appeal herein. Enough said on that.
6. The appellant is granted sixty days to compile, to file and to serve a record of appeal. The appeal shall be mentioned in court after sixty days for purposes of fixing the same for hearing or taking of appropriate directions.
7. Orders accordingly

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 4TH MAY 2023

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 Court fees.

Appearance:

N/A.for Appellant

Mr. Iddi for Respondent

