



**Shine IT Limited v Mwalimu (Appeal E031 of 2021)
[2023] KEELRC 2315 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2315 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E031 OF 2021
AK NZEI, J
SEPTEMBER 28, 2023**

BETWEEN

SHINE IT LIMITED APPELLANT

AND

MESAIDI N'TENGURE MWALIMU RESPONDENT

*(Being an Appeal from the Ruling of Hon. A.S. Lesootia -SRM
Mombasa delivered on 12th May 2021 in Msa ELRC No. 368 of 2019)*

RULING

1. The appeal herein was instituted on 9/6/2021 vide a memorandum of appeal dated 8/6/2021. The memorandum of appeal was not accompanied by any of the documents stated in Rule 8(4) of the *Employment and Labour Relations Court (Procedure) Rules* 2016, which 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.
Provided that where copies of proceedings are not filed with the memorandum of appeal, the Appellant shall file such copies as soon as possible and within a reasonable time.”
2. The Appellant did not file the aforementioned documents, either within a reasonable time from the date of filing the memorandum of appeal or all, and did not, for a period of over 20 months, take any action towards prosecution by the appeal. On 25/1/2023, this Court’s Deputy Registrar issued a written notice to the parties herein under Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules* 2016, calling upon them to attend Court on 20/2/2023 and to show cause why the appeal could not be dismissed for want of prosecution.



3. When the matter came up for notice to show cause before me on 20/2/2023, I made the following orders in the presence of Counsel for both parties:-
 - “(1) the Appellant is granted 21 days to file an affidavit showing cause why the appeal should not be dismissed for want of prosecution, failing which the appeal shall stand dismissed for want of prosecution.
 - (2) mention on 26/4/2023 for further orders.”
4. The Appellant did not file the ordered affidavit within 21 days. An affidavit of Wafula Wanjala Advocate, shown to have been sworn on 14/3/2023, was filed in Court on 15/3/2023, on the 23rd day.
5. It is worth noting that the order made on 20/2/2023 was time bound and self executing, and that there having been no show cause affidavit filed by the Appellant at the close of the 21st day, which was 13/3/2023, the appeal stood dismissed for want of prosecution.
6. It follows that the affidavit of Wafula Wanjala Advocate filed on 15/3/2023 was filed out of time and on a non-existent appeal. The affidavit is hereby struck down, and the Court file is hereby ordered closed.
7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH SEPTEMBER 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 the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Juma for Appellant

N/A Respondent

