



**Shine IT Limited v Mwaumbeya (Appeal E032 of 2021)  
[2023] KEELRC 2317 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2317 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E032 OF 2021  
AK NZEI, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**SHINE IT LIMITED ..... APPELLANT**

**AND**

**MOHAMMED HEMED MWAUMBEYA ..... RESPONDENT**

*(Being an Appeal from the Ruling of Hon. A.S. Lesootia -SRM  
Mombasa delivered on 12th May 2021 in Msa ELRC No. 365 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 herein did not file the aforementioned documents along with the memorandum of appeal, neither did he file them within a reasonable time from the date of filing the memorandum of appeal. For a period of over 20 months, the Appellant did not file the said documents, and he did not take any step towards prosecution by the appeal.



3. 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 21/2/2023 and show cause why the appeal could not be dismissed for want of prosecution.
4. When the matter came up for notice to show cause before me on 21/2/2023, I made the following orders:-
  - “(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.
  - (3) notice to issue.”
5. The foregoing orders were made in the presence of Counsel for the Appellant.
6. The Appellant did not file the ordered affidavit within 21 days. An affidavit, shown to have been sworn by Wafula Wanjala Advocate on 14/3/2023, was filed in this Court on 15/3/2023, on the 22<sup>nd</sup> day.
7. It is to be appreciated that the order dated 21/2/2023 directing the Appellant to file a show cause affidavit within 21 days, which order I have reproduced in this Ruling for ease of reference, was time bound and self executing, and that there having been no show cause affidavit filed by the Appellant at the close of the 21<sup>st</sup> day, which was 14/3/2023, the appeal stood dismissed for want of prosecution.
8. 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.
9. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28<sup>TH</sup> 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:

Ms Juma for Appellant

N/A for Respondent

