



**Kenya Ports Authority v Wandera (Suing as the Administratrix of the
Estate of Alois Wandera Odhiambo - Deceased) (Appeal 8 of 2016)
[2023] KEELRC 2263 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2263 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL 8 OF 2016
M MBARŪ, J
SEPTEMBER 21, 2023**

BETWEEN

KENYA PORTS AUTHORITY APPELLANT

AND

**JENIFER ALOIS WANDERA (SUING AS THE ADMINISTRATRIX OF THE
ESTATE OF ALOIS WANDERA ODHIAMBO - DECEASED) RESPONDENT**

*(Being an appeal from the summary judgment of the Chief
Magistrate at Mombasa, Hon. M. K. Mwangi dated 13 March 2009)*

JUDGMENT

1. This appeal has had back and forth starting from the High Court under Mombasa High Court Civil Appeal No.61 of 2009 and a transfer to this court under the current registration, ELRC Appeal No.8 of 2016.
2. On 9 December 2016 the court delivered a ruling on a preliminary point, after which, Parties went silent until notice to show cause issued for 20 April 2023 when the parties attended and hearing directions issued with a mention date for 8 May 2023.
3. The respondent did attend on 8 May 2023 for taking hearing directions. The appellant's advocate (Mr. Kyandih) submitted that parties be allowed to address the appeal by way of written submissions which was allowed and directions issued in this regard with a mention date for 22 May 2023. Further directions issued and the appellant was directed to file written submissions and to serve the respondent to allow a response and a mention date allocated for 26 June 2023.
4. On the 26 June 2023 the appellant's advocate (Mr Cheruiyot) submitted that they were unable to serve the respondent since the physical address and email address were not available. The court allowed for



more time to ensure the appellant served the respondent with the written submission and allocated another mention date for 10 July 2023.

5. On 10 July 2023, both parties attended and advocate for the appellant submitted that written submissions were served upon the respondent and no responses had been filed. Advocate for the respondent (Mr Atancha) attended and submitted that he had not been served by the appellant with any written submissions. That the alleged service of pleadings was not to the correct address. The court directed Mr Atancha to issue the appellant with the correct physical and email addresses and to respond to the written submissions and to attend court on 25 July 2023 to confirm compliance.
6. On the due date, 25 July 2023 the respondent failed to attend and no written submissions were filed. On their part, the appellant's advocate (Mr Kyandih) submitted that they filed and served the respondent with their written submissions but no responses had been filed and hence appeal is unopposed.

The matter was reserved for judgment.

7. Upon retreat to analyse and render judgment, the last record filed by the appellant is the further record of appeal on 18 November 2022.
8. The entire file from the High Court to date has no written submissions filed by the appellant.
9. On the Case Tracking System (CTS) portal, the last document filed by the appellant is the letter seeking a mention date filed on 22 May 2023 and nothing else. No written submissions by the appellant are in the physical file or the Cts.
10. Despite several attendances by the appellant and submissions by both Khandih and Cheruiyot Advocates that they have served the respondent with the written submissions, none is on the record.
11. It has taken 13 years since the appeal was lodged at the High Court and particularly 7 years before this court.
12. The appeal arose from the summary judgment of Hon. M. K. Mwangi delivered on 13 March 2009 in Mombasa Cmcc No.2198 of 2008 – Jennifer Alois Wandera (suing as Administratrix of the Estate of Alois Wandera Odhiambo (deceased)) v Kenya Ports Authority, the appellant was dissatisfied with the same and filed the instant appeal on the grounds that the summary judgment was erroneous and the learned magistrate had failed to give the appellant a fair chance to be heard on the merits contrary to the rules of natural justice and the judgment should be set aside.
13. Since filing the appeal, the sheer inaction of the appellant has led to the delay of 13 years.
14. There are no reasons why, upon the court indulging the appellant following a notice to show cause why the appeal should not be dismissed on 22 April 2023, there are no written submissions to support the appeal and there has been various attendances with misrepresentations that the written submissions have been filed and served upon the respondent. Such conduct is not justified and can only lead to one conclusion – the appellant has lost interest in this appeal. It should not be maintained at all.
15. Without any basis as to why the appeal was filed, there being no written submissions filed by the appellant to support the instant appeal, the court takes it that the respondent has also not been served with any written submissions on the appeal.
16. Accordingly, the appeal herein is dismissed. The respondent has also not been cooperative in these proceedings. Each party to bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 21ST DAY OF SEPTEMBER 2023.



M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and

