



**Shariff t/a Shariff Water Supply v Ngwiya (Appeal E058 of 2023)
[2023] KEELRC 2474 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2474 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E058 OF 2023
M MBARŪ, J
OCTOBER 4, 2023**

BETWEEN

AHMED SHARIFF T/A SHARIFF WATER SUPPLY APPELLANT

AND

GONA KAZUNGU NGWIYA RESPONDENT

RULING

1. The appellant filed application dated 17 July 2023 seeking for orders that the judgment delivered on 12 June 2023 in Mombasa CM ELRC No E032 of 2022 be stayed pending the hearing of this appeal.
2. The application is supported by the Affidavit of Peter Omwenga advocate for the appellant and on the grounds that following judgment by the trial court on 12 June 2023 in Mombasa ELRC No 1721 of 2019 the respondent issued demand notice the next day on 13 June 2023 for payment of Ksh 752,420 and a subsequent demand dated 13 July 2023, and apprehensive that there will be execution, seek stay of proceedings and the judgment pending the hearing of the appeal herein. An appeal has since been filed in ELRC Appeal No E058 of 2023 and unless the order of stay is granted, the appeal will be rendered nugatory.
3. The appellant has attached a copy of the judgment in Mombasa CM ELRC No E32 of 2022.
4. In reply, the respondent filed his Replying Affidavit and aver that on 12 June 2023 he obtained judgment for Ksh 491,728.50 and costs of Ksh 260,691.98 total being ksh 752,420.48 and has since made demand from the appellant to settle but has failed to do so.
5. The application and the appeal are a delaying tactic meant to deny the respondent the fruits of his judgment and the application should be dismissed with costs.
6. Parties attended and made oral submissions and the single issue which emerge for determination is whether the order of stay should issue pending hearing and determination of the appeal herein.



7. There is no Record of Appeal save for the Memorandum of Appeal. The main issues in the memorandum are that the awards made by the trial court are erroneous and that employment terminated lawfully and fairly and hence, the assessed terminal dues should be reviewed and the appeal allowed.
8. The Notice of Motion dated 17 July 2023 is premised on a judgment delivered on 12 June 2023 in Mombasa CM ELRC No 1721 of 2019.
9. The judgment attached and the averments in the affidavits relates to Mombasa CM ELRC No E32 of 2022.
10. Whereas the respondent has a valid judgment delivered on 12 June 2023, the appellant has a right of appeal. However, as the applicant, the duty to present proper records to urge its case is imperative. The mix up of whether the appeal relates to Mombasa CM ELRC No 1721 of 2019 or E032 or E32 of 2022 was never gone into or addressed as to whether this was an error or an honest mistake.
11. Without clarity, securing the appeal with regard to Mombasa CM ELRC No E032 of 2022 under a different cause in Mombasa CM ELRC 1721 of 2017 would not achieve the intended purpose.
12. Application dated 17 July 2023 is hereby dismissed. Costs to the respondent.
13. On the appeal, the appellant shall file a Record of Appeal within 30 days and serve. Attend for taking hearing directions on 6 November 2023.

Orders accordingly.

DELIVERED IN OPEN COURT AT MOMBASA THIS 4TH DAY OF OCTOBER 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... **and**

