



**Metric Inn Hotel Limited & another v Barasa (Appeal E114 of 2023)
[2023] KEELRC 3171 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3171 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E114 OF 2023
M MBARÚ, J
NOVEMBER 30, 2023**

BETWEEN

METRIC INN HOTEL LIMITED 1ST APPELLANT

SUZZANE OLANG 2ND APPELLANT

AND

ANTHONY WAFULA BARASA RESPONDENT

RULING

1. The appellants filed notice of motion dated 27 October 2023 under the provisions of order 42 rule 6 seeking for orders that;

There be a stay of execution of the entire judgment delivered on 21.9.2023 in MCELRC No.426 of 2019 Mombasa pending the hearing and determination of the intended appeal.

The appellant be allowed to furnish acceptable bank guarantee that it will settle the decretal amount and costs that will be awarded in the appeal.

Costs of this application to abide the outcome of the intended appeal.
2. The application is supported by the affidavit of Suzanne Olang and on the grounds that the lower court judgment delivered on 21 September 2023 and the appellants were dissatisfied with the same and have since served a memorandum of appeal. The appellants have applied for certified proceedings for the purpose of the appeal and also filed this application to secure the subject matter pending hearing of the intended appeal.
3. In support of the application, the appellants filed the Supporting Affidavit of Stephen Rachuonyo. There is no affidavit of Suzanne Olang as indicated.



4. A notice of motion filed before the court must comply with the provisions of rule 17 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016. Under rule 17(8), a party is required to;
 - (8) A notice of motion shall state in general terms the grounds of the application and where the motion is supported by an affidavit, both the notice of motion and a copy of the affidavit shall be served on the other party
5. A competent application before the court must have the grounds upon which the same is premised and the Supporting Affidavit. In this case, the appellants have satisfied these motions and stated that they rely of the Supporting Affidavit of Suzanne Olang. This affidavit is not attached to the application. It is not clarified as to why an affidavit by a third party is attached.
6. Rule 17 of the *Court Rules* is similar to order 19 rule 3 of the *Civil Procedure Rules* that;
Matters to which affidavits shall be confined;
 - (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove: Provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof
7. Despite Stephen Rachuonyo stating that he is the manager of the appellants, he cannot be summoned to support his averments in the instant application upon which, Suzzane Olang is noted as the one to give the support and grounds thereof.
8. An application without a supporting affidavit lack in a material way. It is filed against the Rules of the Court. such stands alone as unsupported. This is not a mere technicality that can be cured in any manner by the court. it has to suffer the obvious. Being struck off for want of a supporting affidavit as held in *University of Nairobi v George Mabele Sifuna* [2021] eKLR.
9. In this case, there is no supporting affidavit in support of the application to which the annexures referenced should have been annexed, the supporting affidavit was sworn by a different persons unrelated to the proceedings and the instant application. This makes the application incompetent as held in *Kenya National Chamber of Commerce & County Council of Makueni v County Council of Makueni* [2003] eKLR.
10. Without a proper application, to address the orders sought would not achieve any justice.
11. The respondent filed his replying affidavit in objection to the instant application but failed to address the issue at hand. Cost shall be assessed at Kshs. 15,000.
12. Application dated 27 October, 2023 is struck out. Costs of Kshs. 15,000 awarded to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF NOVEMBER 2023.

M. MBARŪ

JUDGE

