



**Fibre Link t/a Fibre Link Ltd v Okumbe (Appeal E034 of 2023)
[2023] KEELRC 3016 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3016 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E034 OF 2023
AK NZEI, J
NOVEMBER 23, 2023**

BETWEEN

FIBRE LINK T/A FIBRE LINK LTD APPELLANT

AND

GODFREY OKUMU OKUMBE RESPONDENT

*(Being an appeal against the judgment of Hon. Orimba on the
15th March 2023 at Lodwar in Msa CMELR No. 303 of 2020)*

RULING

1. The application before me is the appellant's Notice of Motion dated April 14, 2023, expressed to be brought under order 42 rule 6, order 51 rule 1 and sections 1A, 1B, and 3A of the Civil Procedure Act. The following orders are sought:-
 - a. that the Court be pleased to order a stay of execution of the judgment and decree entered by the Court on March 15, 2023 pending hearing and determination of the appellant's appeal herein.
 - b. that cost of the application be in the cause.
2. The application sets out on its face the grounds on which it is founded, and is premised on the Supporting Affidavit of one Sheel Dodhia, the Respondent's proprietor, sworn on 14/4/2023. It is deponed in the said affidavit:-
 - a. that the appellant/applicant is aggrieved by the judgment of hon Orimba delivered on March 15, 2023, and has preferred an appeal to this Court, which has high chances of success.
 - b. that the appellant/applicant has applied in writing for certified copies of the decree, proceedings and judgment in readiness for preparation of a record of appeal.



- c. that the appellant/applicant is apprehensive that if the decretal sum is paid over to the respondent, the appeal will be rendered nugatory and the appellant will suffer substantial loss and damage as the respondent has no means of refunding the decretal sum if the appeal succeeds.
- 3. I have noted that the trial court’s judgment, allegedly delivered on March 15, 2023, is not annexed to the aforementioned Supporting Affidavit, although it is purported to be annexed thereto as annexure “SD-1”. Indeed, the appellant has not placed a copy of the judgment purported to be appealed against on record pursuant to rule 8(4) of the *Employment and Labour Relations Court (Procedure) Rules, 2016*. I have, however, noted from the memorandum of appeal filed herein on April 14, 2023 that the appeal herein is against a judgment delivered at Lodwar on March 15, 2023 in Mombasa CM ELR Case No 303 of 2020.
- 4. A worrying trend has emerged whereby parties file appeals in this Court without complying with rule 8(4) of this *Court’s Rules*, and proceeding to apply for stay of execution of the trial Court’s decree without caring to place on record a copy of the decree and/or judgment appealed against and copies of documents referred to in rule 8(4). This Court cannot stay execution of a decree that it has not seen.
- 5. For record purposes, the application is opposed by the Respondent *vide* a Replying Affidavit sworn by him on May 8, 2023. It is deponed in the said Replying Affidavit that the appellant/applicant applied for review of the judgment said to be appealed from *vide* an application dated March 20, 2023. That the application came up for hearing on April 12, 2023 whereupon it was dismissed. A copy of the said application dated March 20, 2023 is annexed to the Replying Affidavit. I will not interrogate the legal import of issues raised in the respondent’s Replying Affidavit, in view of my finding herein that this Court cannot consider the merits or otherwise of the application herein in the absence of the decree and/or judgment appealed against.
- 6. The Notice of Motion dated April 14, 2023 is incompetent and is hereby dismissed with costs.
- 7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 23RD NOVEMBER 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 Respondent fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

..... for Appellant

..... Respondent

