



Kiura v Multimedia University College of Kenya & another (Employment and Labour Relations Cause 2041 of 2012) [2023] KEELRC 3408 (KLR) (18 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3408 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2041 OF 2012**

**K OCHARO, J
DECEMBER 18, 2023**

BETWEEN

JUSTA WAWIRA KIURA APPLICANT

AND

MULTIMEDIA UNIVERSITY COLLEGE OF KENYA 1ST RESPONDENT

WALTER ODHIAMBO OYAWA 2ND RESPONDENT

RULING

1. Through a Notice of Motion Application expressed to be brought under the provisions of section 12 (3) (i) and (viii) of the *Employment and Labor Relations Court Act* and Rule 17 (1) (2) & (3) of the Employment and Labor Relations Court (Procedure Rules, 2016, the Claimant/ Applicant sought.
 - a. That this application be and is hereby certified as urgent and service be dispensed with in the first instance.
 - b. That pending the hearing and determination of this application this Honourable Court be pleased to grant an order of stay of execution and proceedings arising from the Judgement delivered on 4th December, 2019 pending the hearing and determination of the intended appeal.
 - c. That this Honourable Court be pleased to grant an order of stay of execution and proceedings arising from the Judgement delivered on 4th December 2019, pending hearing and determination of the intended appeal.
 - d. That this Honourable Court be pleased to order that certified pleadings and Judgment in this suit be supplied to the Applicant forthwith to enable her to prepare and lodge her appeal at the court of appeal.
 - e. That costs of the application do abide by the outcome of the intended appeal.



2. The Application is premised on the grounds set out on the face of the application, and those in the supporting affidavit.
3. The Claimant asserts that judgment in this matter was delivered on the 4th of December 2019. Aggrieved by the judgement she filed a notice of appeal dated 10th December 2019, on the 11th December 2019, signifying her intention to lodge an appeal in the Court of Appeal against the judgement.
4. The Claimant states further that on the 10th December 2019, her then Advocate on record wrote to the court requesting to be supplied with certified copies of the Proceedings and judgment. Further, on 24th May 2022, his current Advocate on record wrote a reminder to the court and sought to be urgently supplied with the copies.
5. The foregoing premises notwithstanding, the copies of typed Proceedings and judgment have never been supplied to her.
6. That Counsel for the Respondent has commenced the process of taxation of party and party costs, a process that will delay further the typing of the Proceedings and Judgement.
7. The failure to secure the typed proceedings and judgement has rendered it difficult for her to lodge an appeal at the Court Appeal within the prescribed period. Yet the 2nd Respondent is taking capital of the situation by lodging its bill of costs. The intended appeal if allowed will have a direct bearing on the issue of the costs awarded to the 2nd Responded.
8. In his written submissions dated 21st September 2022 Counsel for the Applicant contends that the only issue that emerges for the determination is whether this Court should exercise its discretion to stay the judgement delivered on 4th December 2019 and further proceedings pending the hearing and determination of the intended appeal.
9. The Respondents did not file a response (s) to the application within the timelines fixed by this Court or at all. They did not file their submissions either.

Analysis and Determination.

10. I have carefully considered the material placed in this Court and the history of this matter as the record reveals. I have no hesitation in stating that the Application is for failing for two reasons as shall come out shortly hereinafter.
11. There is no doubt that after the Judgement herein was delivered, the Claimant /Applicant filed a Notice of Appeal on the 11th of December 2019, well within the prescribed period. Further, her Application is anchored on the Notice of Appeal and its alleged validity.
12. At the time of filing the instant Application on the 4th of July 2022, two (2) years and eight (8) months later, the Claimant/Applicant does not appear to have filed her appeal at the Court of Appeal. She certainly did not state that she did either in her submissions or the affidavit in support of the Application herein.
13. Rule 82 (1) of the [Court of Appeal Rules](#) 2010, which governs filing of a record of appeal provides as follows:

“Institution of Appeals “

1. Subject to Rule 115,



An appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the Notice of Appeal was lodged -

- a. A memorandum of Appeal in quadruplicate
- b. The record of appeal in quadruplicate
- c. The prescribed fee, and
- d. Security for the costs of the appeal

Provided that where an application for the copy of proceedings in the Superior Court has been made in accordance with sub-rule 2 within thirty (30) days of the date of the decisions against which it is desired to appeal, there shall, in computing the time within which the appeal to be instituted excluded such time has maybe certified by the registrar of the Superior Court as having been required for the preparation and delivery to the Appellant of such copy.”

14. Rule 83 of the *Court of Appeal Rules* 2010, provides:

“if a party who has lodged a Notice of Appeal fails to institute an appeal within the appointed time he shall be deemed to have withdrawn his Notice of Appeal and the Court may on its own motion or on application by any party makes such order. The party in default shall be liable to pay the costs arising therefore to any person on whom the Notice of Appeal was served”.

In the instant case, the Applicant has not addressed this Court on the validity of the Notice of Appeal in light of the above set out provisions of the Law.

15. In my view, the Applicant’s Notice of Appeal was deemed withdrawn by operation of the Law at the lapse of sixty (60) days of the date of its filing. The Validity would only be regained through a successful application to the relevant forum for an extension of time.
16. In the circumstances it cannot be said that the Applicant has an intended appeal that can be a basis for grant of the orders sought in the instant application.
17. In the judgement herein, the Court rendered itself thus;

“ 153 Considering my findings above, I find that the Claimant was not able to establish her case against the 2nd Respondent on sexual harassment. I therefore dismiss her case against the 2nd Respondent with costs.

154. As for the 1st Respondent the Claimant established the 1st Respondent did not have a Sexual Harassment Policy as expected by the Law at the time. Because of this omission, I issue an order compelling the 1st Respondent to institute a Sexual Harassment Policy in compliance with the Employment Act 2007 within 3 months from the date of this judgment.

155. In addition, I fine the 1st Respondent a fine of Kshs. 50,000/=.

156. The 1st Respondent will pay the costs of the Claimant in this case.”

18. Certainty no positive command exists in the judgement to attract an order of stay of execution pending appeal. Further, the Application is couched in a manner too general for one to fathom the post-judgment proceedings that the Applicant intends to have stayed.



19. In the upshot, I find the Applicant's application herein lacking in merit. It is as a result it is dismissed.

READ, DELIVERED AND SIGNED THIS 18TH DAY OF DECEMBER, 2023.

OCHARO KEBIRA

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

