



**Ogonda v Transtrailers Limited (Appeal 26 of 2019)
[2022] KEELRC 1132 (KLR) (5 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1132 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL 26 OF 2019**

**AK NZEI, J
MAY 5, 2022**

BETWEEN

DAVID OKEYO OGONDA APPELLANT

AND

TRANSTRAILERS LIMITED RESPONDENT

*(Appeal from the Judgment delivered on 5/12/2019 before
Hon. G. Kiage –SRM in Msa CM-ELRC No. 45 of 2018)*

RULING

1. The appeal herein was instituted vide a Memorandum of Appeal dated December 18, 2019 and filed in Court on the same date. No action is shown to have been taken towards prosecution of the appeal until November 16, 2021 when the Court’s Deputy Registrar issued a written notice under Rule 16 of the *Employment Act and Labour Relations Court (Procedure) Rules 2016*, calling upon both parties to attend Court on November 30, 2021 and show cause why the appeal could not be dismissed for want of prosecution.
2. Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules 2016* provides:-
 - (1) “In any suit where no application has been made in accordance with Rule 15 or no action has been taken by either party within one year from the date of filing, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and if no reasonable cause is shown to its satisfaction, may dismiss the suit.
 - (2) If reasonable cause is given to the satisfaction of the Court, it may make such orders as it thinks fit to obtain the expeditious hearing and determination of the suit.



- (3) Any party to the suit may apply for dismissal as provided in paragraph (1).
 - (4) The Court may dismiss the suit for non-compliance with any direction given under this Rule.”
3. When the appeal came up for notice to show Cause before me on November 30, 2021, the Appellant’s Counsel told the Court that the Appellant was interested in prosecuting the appeal but there had been delay in obtaining the lower Court’s proceedings. Counsel further submitted that the Record of Appeal could be filed in fourteen days. I made the following orders:-
- “(a) the Appellant is granted 7 days to file an affidavit showing cause why the appeal should not be dismissed for want of prosecution, failing which the appeal will stand dismissed for want of prosecution.
 - (b) mention on 24/1/2022.”
4. The show cause affidavit ordered on November 30, 2021 to be filed within seven days by the Appellant was not filed until January 27, 2022. A Record of Appeal is shown to have been filed on January 14, 2022.
5. Both the Record of Appeal and show cause affidavit sworn by Stephen Mutisya Advocate on January 12, 2022 and filed in Court on 27th January 2022 were filed on a non-existent appeal as the appeal herein stood dismissed for want of prosecution by close of the day on 7th December 2021. The same are hereby struck down.
6. Likewise, the replying affidavit of Joseph Karanja Kanyi Advocate sworn on January 26, 2022 and filed in Court on January 27, 2022 urging the Court to dismiss the appeal for want of prosecution was filed on a non-existent appeal, as the appeal herein stood dismissed for want of prosecution by close of Court business on December 7, 2021. The affidavit is hereby struck down.
7. The appeal having been dismissed for want of prosecution pursuant to this Court’s orders dated November 30, 2021 as stated in this Ruling, the Court file herein is hereby ordered closed.
8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 5TH DAY OF MAY 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

N/A for Appellant

Miss Mango for Respondent

