



Royal Group Industries (K) Ltd v Ombui (Employment and Labour Relations Appeal 2 of 2020) [2022] KEELRC 1512 (KLR) (16 June 2022) (Ruling)

Neutral citation: [2022] KEELRC 1512 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL 2 OF 2020
DN NDERITU, J
JUNE 16, 2022**

BETWEEN
ROYAL GROUP INDUSTRIES (K) LTD APPELLANT
AND
JAMES ABUGA OMBUI RESPONDENT

RULING

1. In a Notice of motion dated January 31, 2022 the Respondent/Applicant prays for the following:-
 1. That the Memorandum of Appeal and or Appeal filed without leave of the Court be deemed a nullity and of no legal consequence.
 2. That the Memorandum of Appeal filed herein be struck out.
 3. That the Application for leave to file the Memorandum of Appeal out of time is *res judicata* in view of the court order of July 7, 2020.
 4. That the costs of this application be provided for.
2. The said application is based on the grounds on the face of it and supported by the affidavit of Jeniffer** Mugweru, Advocate, sworn on January 31, 2022. There are several annexures to the supporting affidavit.
3. In response to the said application the appellant/respondent filed a replying affidavit by Samuel Odongo Omiti, Advocate, sworn on February 16, 2022 with several annexures thereto.

II. Background

4. In a judgment delivered on January 30, 2020 the trial lower court (Hon. Limo B. Benjamin) found in favour of the Respondent in this appeal and entered judgment in his favour in the following terms:-



1. The declaration that the respondent's termination of the claimant's employment was unfair. And for that 12 gross monthly salaries will serve ends of justice for the unlawful termination.
 2. One month pay in lieu of termination notice; one month pay in lieu of annual leave, and to pay by 1.12.2014 failing interest at court rates to be payable until the date of full payment.
 3. One month's salary for unpaid leave days for each year served.
 4. There is no evidence and none of the plaintiff's documents support the claim for gratuity, and for holidays.
 5. The respondent to pay costs of the suit.
5. The appellant herein was dissatisfied with the said judgment and due to passage of time moved this court (Mbaru J) vide Nakuru ELRC Misc No. 4 of 2020 for extension of the period within which to file an appeal. A ruling was delivered on July 7, 2020 whereby the Appellant was granted 14 days within which to file an appeal. A copy of the said ruling has been exhibited by the respondent/applicant herein and the court file for Misc.No. 4 of 2020 has also been availed to this court.
 6. Even if one used the most generous method in calculating when the 14 days were to lapse it could not be beyond July 31, 2020.
 7. The respondent/applicant avers that no notice of appeal or any other document was served upon him or his Counsel filed within the 14 days allowed and hence any appeal pending must have been filed out of time and the same is hence null and void.
 8. Further, the respondent/applicant has averred through his Counsel that the appellant/respondent in an apparent attempt to compound and confuse him and the court purported to file two appeals over the same subject matter being Nakuru ELRCA No.2 of 2020 and Nakuru ELRCA No.12 of 2020.
 9. However, the respondent/applicant states that he has come across a memorandum of appeal filed by the appellant/respondent in Nakuru ELRCA No.12 of 2020 which was filed on September 7, 2020 long after the 14 days granted had expired. The respondent/applicant submits that no order for extension was sought for and or granted and hence the purported appeal is a nullity and void.
 10. The ruling by Mbaru J in Misc. No. 4 of 2020 clearly indicates that the same was delivered on July 7, 2020 and granted the appellant/respondent 14 days within which to file an appeal.
 11. In paragraph 16 of the replying affidavit Counsel for the appellant/respondent admits that both appeals Nos. 2 and 12 of 2020 are in respect of the same subject matter.
 12. As it turns out, Appeal No. 12 of 2020 was dismissed for want of prosecution on November 17, 2021.
 13. The very fact that the appellant/respondent had the audacity to file two appeals over the same subject matter and fail to withdraw either one of them even after realising the mistake, as admitted by its counsel, is in itself abuse of the court process.
 14. The memorandum of appeal in this Appeal No. 2 of 2020 was filed on September 7, 2020 long after the 14 days granted had expired. The same position obtains in Appeal No. 12 of 2020.

III.Disposal

15. In the circumstances and for the foregoing reasons, it is the finding and holding of this court that both appeals were filed out of time granted and as such the same are null and void.



16. This court goes by the decision of the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & others* (2014) eKLR to the effect that an appeal filed out of time is an illegality, null and void.
17. For the reasons stated above the Notice of motion dated January 31, 2022 by the respondent/applicant is allowed and the memorandum of appeal filed herein is struck out with costs. In effect the appeal herein, if any existed, is dismissed with costs as the same is an illegality, null and void.
18. This ruling, *mutatis mutandis*, applies to Appeal No. 12 of 2020.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH DAY OF JUNE, 2022.

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DAVID NDERITU

JUDGE

