



Director General, Kenya School of Government & Director, Baringo Campus v Jebet (Employment and Labour Relations Appeal E007 of 2021) [2022] KEELRC 1183 (KLR) (13 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1183 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E007 OF 2021**

DN NDERITU, J

JULY 13, 2022

BETWEEN

**DIRECTOR GENERAL, KENYA SCHOOL OF GOVERNMENT & DIRECTOR,
BARINGO CAMPUS APPELLANT**

AND

JUNE JEBET RESPONDENT

RULING

I. Introduction

- 1 In a Notice of motion dated 24th January, 2022 the Respondent/Applicant prays for the following orders:-
 1. That this Honourable Court be pleased to strike out the Memorandum of appeal filed herein.
 2. That this Honourable court be pleased to dismiss the appeal filed herein for want of prosecution.
 3. That costs of the application and the appeal be provided for
2. The said application is expressed to be brought under article 159 of *The Constitution* sections 1A, 1B, 3, and 3A of the *Civil Procedure Act*, order 42 rules 11, 12, 13 and 35, and order 43 of the *civil procedure rules*; sections 3, 4, 12 and 29 of the *Employment And Labour Relations Court Act* and rules 8, 17, 28, 30, and 33 of the *Employment And Labour Relations Court* (procedure) rules, 2016, and all other enabling provisions of the law.
3. The application is based on the grounds on the face of it and is supported by the affidavit of the Applicant, June Jebet, sworn on 24th January, 2022 and several annexures thereto.



4. In response to the application Respondent (Appellant) filed a replying affidavit sworn by Chepkurui Janet, a state Counsel acting for the Appellant, sworn on 17th March, 2022. There are several annexures to the said affidavit.
5. On 9th March, 2022 Counsel for both parties consented that the application be disposed of by way of written submissions. Counsel for Applicant filed on 28th March, 2022 but Counsel for Appellant opted not to file and informed the Court of that position on 30th March, 2022 when the matter came up in Court for mention.

II. Disposal

6. The Appellant commenced this appeal by way of memorandum of appeal dated 2nd August, 2021 filed on 3rd August, 2021.
7. In response to the appeal the Applicant herein filed a notice of cross-appeal dated 9th August, 2021 filed in court on 10th August, 2021.
8. In a ruling delivered on 27th July, 2021 in Nakuru ELRC Misc. Application No. E011 of 2021 the court (Wasilwa J) granted a stay of execution to the Appellant pending filing and hearing of the appeal. In the same application the Appellant was granted leave to file the appeal out of time. The appeal was promptly filed on 3rd August, 2021.
9. In paragraph 11 of the of the supporting affidavit the Applicant herein complains that since the filing of the appeal the Appellant has taken no steps towards filing a record of appeal and prosecuting the appeal.
10. Further, the Applicant urges that notwithstanding that typed certified proceedings and judgment of the trial lower court have been ready since 4th June, 2021 the Appellant has taken no steps towards disposal of the appeal. A copy of the said typed certified proceedings is annexed to the supporting affidavit confirming that the same was certified on 4th April, 2021.
11. It is the Applicant's argument in paragraphs 14, 15, and 16 of the supporting affidavit that since the Appellant has taken no step towards prosecuting the same that the memorandum of appeal should be stuck out and the appeal dismissed with costs.
12. In the replying affidavit the Appellant describes the application as misconceived, misrepresentation of facts, frivolous, and an abuse of court process. However, the Appellant does not demonstrate or account for why it holds that view.
13. In paragraph 9 of the replying affidavit the Appellant alleges that the Applicant has come to court with dirty hands but again no explanation or illustration has been offered.
14. The Appellant has not denied the facts as set out by the Applicant. For example, it is not disputed that the proceedings from the trial court have been ready and available since 4th June, 2021.
15. There is also no explanation whatsoever as to why the Appellant has taken no steps in preparing and filing the record of appeal, setting the matter for directions, and having the same set down for hearing and disposal.
16. However, as noted elsewhere in this ruling, the Applicant filed a cross-appeal that she needs to prosecute as well. The Applicant is equally obligated to, in the face of failure by the Appellant to prepare record of appeal, fix appeal for directions, hearing, and disposal, prepare a record of appeal,



and prosecute the cross-appeal while at the same time asking for striking out of the memorandum of appeal by the Appellant.

17. Even if this court was to strike out the memorandum of appeal by the Appellant, the matter shall not end there as the cross-appeal shall still be pending awaiting directions, hearing, and determination.
18. In the circumstances, and view of the foregoing, this court is of the view that both the Appellant and the Applicant are to blame for the delay in having this appeal and the cross- appeal heard and determined.
19. While the Appellant may be deliberately delaying the hearing and disposal of the appeal while enjoying the stay of execution orders, the Applicant is not desperate as it is equally liable to prosecute the cross-appeal.
20. This court has gone through the materials placed before it in support of the application and the opposition thereto, and also the written submissions by Counsel for the Applicant. In the interest of justice based on Section 3 of the *Employment and Labour Relations Court Act* and the other laws cited, this court makes and issues the following orders in disposal of this application.
 - (a) That the Appellant is ordered to take appropriate steps in prosecuting the appeal, and the Respondent is ordered to prosecute the cross-appeal.
 - (b) That the steps above include preparing and filing the record of appeal, fixing the matter for directions, and ensuring that the matter is fixed for hearing.
 - (c) That (a) and (b) above shall be done within the next 60 days of this ruling.
 - (d) That failure to comply with (a), (b), and (c) above shall render the appeal and the cross-appeal amenable to dismissal for want of prosecution.
 - (e) There is no order as to costs for this application.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 13TH DAY OF JULY, 2022.

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DAVID NDERITU

JUDGE

