



**Mbogo v ASP Company Limited (Appeal E103 of 2021)  
[2022] KEELRC 13308 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13308 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E103 OF 2021  
J RIKA, J  
NOVEMBER 30, 2022**

**BETWEEN**

**PRISCA KARIMI MBOGO ..... APPELLANT**

**AND**

**ASP COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The Appellant filed C.M.E.L Cause No. 938 of 2019 against the Respondent for compensation for unfair termination, among other remedies.
2. The Trial Court declined the prayer for compensation, awarding the Appellant the prayer for unreasonable deployment, at Kshs. 72,000.
3. At paragraph 17 of the Judgment, it is stated that, "In the circumstances, I would allow the claim, award the Claimant Kshs. 22,000 x 9 years = Kshs. 188,000."
4. Paragraph 20 however, states that, "In the end, I enter Judgment in favour of the Claimant against the Respondent for a total sum of Kshs. 72,000, being compensation for unreasonable deployment."
5. It is not clear to this Court, what sum the Appellant was awarded by the Trial Court in the Judgment.
6. The Appellant has applied for leave to file an Appeal out of time. The Application is dated 14<sup>th</sup> September 2021.
7. She explains that Judgment was reserved by the Trial Court for 7<sup>th</sup> May 2021. It was not ready, and the Court rescheduled it for 13<sup>th</sup> May 2021. Parties appeared before the Trial Court on 13<sup>th</sup> May 2021, and were advised delivery would be on 25<sup>th</sup> August 2021. The Court did not sit on 25<sup>th</sup> August 2021 as the Honourable Magistrate was indisposed.



8. When the Appellant's Advocate sought to rescheduled a date for the Judgment, it was indicated in the Judiciary Case Tracking System, that Judgment was delivered on 25<sup>th</sup> May 2021, in the absence of both Parties. The Appellant therefore seeks more time to file her Appeal, explaining that delay in filing, was occasioned by the mix-up on the date Judgment was to be delivered.
9. The Application is supported by the Affidavit sworn by the Appellant, on 31<sup>st</sup> August 2021.
10. It is opposed through the Affidavit of Janet Ndunge John, Respondent's Manager, sworn on 24<sup>th</sup> June 2022.
11. John states that the Respondent's Advocates, were not served by the Appellant with a Notice of Appeal. The Application was served upon the Respondent on 31<sup>st</sup> May 2022.
12. The Respondent submits that the Appellant went ahead and extracted a decree in total reliance on the Judgment of the Trial Court. The Appellant's Advocates pressured the Respondent to settle decree, based on the Judgment of the Trial Court. On 18<sup>th</sup> March 2022, the Respondent issued Appellant's Advocates a cheque for settlement of the decree. The Intended Appeal has already been compromised. The time to file an Appeal has lapsed, and the Application is made in afterthought.
13. It was agreed that the Application is considered and determined on the strength of the Affidavits filed by the Parties, and Written Submissions, which were confirmed to have been filed and served at the last mention before the Court, on 23<sup>rd</sup> September 2022.

**The Court Finds: -**

14. The Respondent does not dispute the inconsistent Judgment dates issued by the Trial Court, and in particular, that Judgment was delivered on 25<sup>th</sup> May 2021 in the absence of the Parties. It is not disputed that the Appellant only learnt Judgment had been delivered on 25<sup>th</sup> May 2021, through the Court Tracking System, when the Appellant sought a fresh date for Judgment on 25<sup>th</sup> August 2021.
15. Time to lodge any Intended Appeal had lapsed, by the time the Appellant learnt that Judgment had been delivered.
16. The issues raised about the Respondent having settled the decree based on Judgment of the Trial Court, do not bar the Appellant from pursuing Appeal. Settlement of the decree as pronounced by the Trial Court, would not foreclose the Appellant from pursuing Appeal on grounds she feels merit an Appeal. The Judgment of the Trial Court for instance appears inconsistent at paragraphs 17 and 20, as observed above. The Draft Memorandum of Appeal raises an arguable Appeal. There was no delay in lodgement of the Application. The Application is indicated to have been received in the Court's Registry on 14<sup>th</sup> September 2021. The Claimant learnt about the existence of the Judgment on 25<sup>th</sup> August 2021.
17. The Court has taken into account the relevant factors in exercising its discretion to grant extension, as enunciated in the Court of Appeal decision, *Thuita Mwangi v. Kenya Airways* [2003] e-KLR, which include: period of delay; reason for delay; arguability of the Intended Appeal; degree of prejudice the Respondent would suffer if extension is granted; the importance of compliance with time limits; and the effect if any, on the administration of justice, or public interest if any.
18. The Parties did not address the Court fully on whether a Notice of Appeal was filed, and if not, the legal effect default would have on the Application for extension of time to lodge an Appeal. If none was filed, the Court would attribute this to the mix-up on the date Judgment was delivered, and proceed to assist the Parties, by extending the time for filing of the Notice of Appeal.
19. It Is Ordered: -



- a. The Intended Appellant shall file and serve her Record of Appeal within 60 days of this Ruling.
- b. Notice of Appeal shall be filed and served within 14 days of this Ruling, if not already on record and served.
- c. Parties shall move the Court on further orders on the hearing and disposal of the Intended Appeal.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30<sup>TH</sup> DAY OF NOVEMBER 2022.**

**JAMES RIKA**

**JUDGE**

