



**Auto Continental Limited v Chome (Appeal E003 of 2020)  
[2022] KEELRC 13353 (KLR) (1 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13353 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E003 OF 2020  
AK NZEI, J  
DECEMBER 1, 2022**

**BETWEEN**

**AUTO CONTINETAL LIMITED ..... APPELLANT**

**AND**

**FRANKLINE NGALA CHOME ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon. Lesootia Saitabau, - PM at  
Mombasa CM- ELR Case No. 722 of 2019 delivered on 16th July 2020)*

**RULING**

1. The appeal herein was instituted on 16<sup>th</sup> October 2020 vide a Memorandum of Appeal dated 9<sup>th</sup> October 2020. The Appeal is expressed to be against the Ruling of Hon. Lesootia Saitabau, Principal Magistrate, delivered on 16<sup>th</sup> July 2020 in Mombasa CMC-ELR Case No. 722 of 2019.
2. No record of appeal is shown to have been filed pursuant to Rule 8 of the Employment and Labour Relations Court (Procedure) Rules, 2016. Indeed, there is no indication that the Appellant has made any and/or any notable effort to prosecute the appeal.
3. On 6<sup>th</sup> June 2022, the Respondent filed the Notice of Motion dated 2<sup>nd</sup> June 2022 seeking orders:-
  - a. that the Court be pleased to strike out the Memorandum of Appeal dated 9<sup>th</sup> October 2020.
  - b. that the Court be pleased to dismiss the appeal filed herein for want of prosecution.
4. The application is predicated on the supporting affidavit of Ernest Mokaya Advocate sworn on 2<sup>nd</sup> June 2022. It is deponed in the said affidavit:-
  - a. that the appeal was filed vide a Memorandum of Appeal dated 9<sup>th</sup> October 2020, and that the Appellant is yet to file and serve a record of appeal.



- b. that the primary suit, CMC-ELR Case No. 722 of 2019, (Frankline Ngala Chome -vs- Auto-continental Limited) is now determined as the trial Court delivered its judgment on 18<sup>th</sup> February 2022.
  - c. that the appeal herein, being an interlocutory appeal, is overtaken by events as judgment in the primary suit has been rendered.
  - d. that the Appellant lost interest in the appeal herein after realizing that the same is a non-stata.
  - e. that the Appellant has not moved the Court for a period exceeding one year.
5. The application is opposed by the Appellant vide a Replying Affidavit of Stephen Jumbale Advocate sworn on 12<sup>th</sup> July 2022. It is deponed in the said affidavit that the reason why no record of appeal was filed is because the Appellant was not supplied with typed and certified copies from the Court's Registry despite diligent follow up, and that even after delivery of judgment in the primary suit, the Court file has since not been available.
  6. It is worth noting that the Appellant/Respondent has not explained to this Court how trial in the primary suit was conducted and judgment delivered if the lower Court's file has been missing all this while.
  7. The present application was filed on 6<sup>th</sup> June 2022, over one year from 15<sup>th</sup> April 2021 when the appeal is shown to have come up in Court for delivery of a Ruling. This demonstrates lack of interest in the appeal on the part of the Appellant.
  8. Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows:-
    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."
  9. The word "suit" is defined in Rule 2 of the Employment and Labour Relations Court (Procedure) Rules 2016 to include an appeal.
  10. The Appellant has not shown any reasonable cause, to the satisfaction of this Court, why the appeal herein should not be dismissed for want of prosecution.
  11. Consequently, the Notice of Motion dated 2<sup>nd</sup> June 2022 is allowed, and the Appellant's appeal herein is hereby dismissed for want of prosecution. Each party will bear its own costs of the appeal.
  12. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 1ST DAY OF DECEMBER 2022**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**



In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling 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/Respondent

Mr. Mwanguya Respondent/Applicant

