

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

APPEAL NO. 14 OF 2020

(FORMERLY HC CIVIL APPEAL NO. 154 OF 2019)

RUIRU FEEDS LIMITED.....APPELLANT

VERSUS

SAMUEL NJUGUNA MBUGUA.....RESPONDENT

RULING

1. The notice of motion dated 14th April 2021 is due for determination. It seeks the dismissal of the instant appeal as there had been inordinate delay in filing the record of appeal which amounts to negligence as the Appellant has not taken any steps in prosecuting this appeal since 23rd October 2019 when the memorandum of appeal was filed.
2. The motion was supported by the affidavit of Samuel Njuguna Mbugua the Respondent herein. He deposed that the Appellant had been ordered to pay him terminal dues amounting to Kshs. 324,170.50 plus interest and that the Appellant preferred an appeal on 23rd October 2019 but has since then not filed the record of appeal. He asserts this amounts to negligence and a wastage of the court precious time. He deposed that the Appellant had the intention of continuing to deny him the fruits of his judgment.
3. The Appellant filed a replying affidavit sworn by Mr. Harish Patel who deposed that the averments by the Respondent were denied as the Appellant has been keen to prosecute the appeal and has already taken steps towards prosecuting the appeal. He deposed that the lower court had not supplied the physical copies of certified proceedings and judgment to enable the Appellant file the record of appeal. He deposed that the Appellant has been making efforts to have the same availed and cannot be blamed for the delay to have the proceedings ready.
4. The certified copy of typed proceedings and judgment are yet to be availed to the Appellant by the Chief Magistrate's Court at Ruiru. The record is what has delayed the filing the record of appeal. There are 2 letters attached bespeaking the typed proceedings and copy of judgment. In computing time for the preparation and presentation of the record of appeal, there is provision for exclusion of the period of aforesaid delay in the preparation and supply of the proceedings by the registry. There must however be proof that an appellant is able to demonstrate that firstly, a request for proceedings was made in writing to the deputy registrar, and secondly, that a copy of such request was been served on the respondent. In the 2 letters displayed as proof, none is copied to the Respondent herein. In the premises, there would be no way to salvage the appeal preferred as there has been material departure from the law in presenting this appeal for determination rendering the appeal moot. Appeal is struck out with costs to the Respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2021

NZIOKI WA MAKAU

JUDGE