



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

APPEAL NO.22 OF 2020

UNIVERSITY OF NAIROBI.....APPELLANT

VERSUS

GEORGE MABELE SIFUNA.....RESPONDENT

RULING

The respondent, George Mabele Sifuna filed chamber Summons dated 26th August, 2021 under the provisions of Rule 28(1) (g) of the Employment and Labour Relations Court (Procedure) rules and seeking for orders that;

a) The appellant's appeal be dismissed with costs for ant of prosecution.

b) Consequently, this court be pleased to order the release of the deposited amount with this court as security and the said amount be released to the appellant's firm of Advocates herein.

c) Costs of this application be borne by the appellant.

The application is supported by the affidavit of the respondent and on the grounds that since the appellant filed the Memorandum of Appal and Record of Appeal on 10th February, 2016 and 18th December, 2019 respectively but no effort to prosecute the appeal has been made. It is now over year since and the court has discretion to dismiss the appeal for want of prosecution.

No Supporting Affidavit is attached to support the application.

In reply, the appellant filed the Replying Affidavit of Allan George Njogu Kamau and who avers that he is the advocate for the appellant and that the appellant has not lost interest in the appeal. the appellant filed two appeals to the High Court being Civil Appeal No.41 of 2016 and Civil Appeal No.503 of 2017 filed in September, 2017 and September, 2020 respectively.

Mr Kamau also avers that on 9th November, 2018 he wrote to the Deputy Registrar on the admission of the appeal which had not and a further letter dated 13th November, 2018 requested for the file to be transmitted to the High Court Appeals division. on 6th June, 2019 the matter was allocated a date but it turned out to be a Public Holiday.

The matter has been with the Deputy Registrar on several occasions and then in 2020 due to COVID 19 no hearing dates would be secured and it was not until 19th July, 2021 when the appellant realised the file had since been transmitted to this court from the High Court whereupon the respondent filed this application. The appellant is keen to address the appeal.

The respondent filed his Further Affidavit and avers that after the appellant filed the Record of Appeal there is nothing done to prosecute the appeal and the failure by the trial court to release the subject files has not been addressed with the judiciary ombudsman. Since the typed proceedings completed, the appellant did nothing to prosecute the appeal.

The appellant has lost interest in the matter and the appeal should be dismissed and the funds deposited as security should be released to the respondent.

Determination

The respondent has filed his *Chamber Summons* under the provisions of Rule 28 of the Employment and Labour Relations Court (Procedure) Rules, 2016 (The Rules) and which Rule applies to the decisions of this court.

The proper Rule to apply is Rule, 17.

Under sub Rule 17(1) and (8) requires that;

17. (1) An interlocutory application shall be made by notice of motion and shall be heard in open Court

...

(8) A notice of motion shall state in general terms the grounds of the application and where the motion is supported by an affidavit, both the notice of motion and a copy of the affidavit shall be served on the other party

An applicant seeking interlocutory orders, even in an appeal, one should file a Notice of Motion accompanied by a Supporting Affidavit stating the facts upon which the applicant is relying upon. The respondent has filed a *Chamber Summons* and without a Supporting Affidavit.

An application without a Supporting Affidavit lack in a material way. It is filed against the Rules of the Court. such stands alone as unsupported. This is not a mere technicality that can be cured in any manner by the court. it has to suffer the obvious. Being struck off for want of a Supporting Affidavit.

The above put into account, where the court were to address the application on the merits, Rule 16 allow the court to dismiss a suit and an appeal where there is no action within one (1) year.

The appellant has taken a journey from the trial court to the High Court and the instant appeal was only seized by this court on 12th March, 2020. It is common knowledge the on 16th March, 2020 the Chief Justice issued Practice Directions with regard to the COVID 19 pandemic and courts temporarily closed. Courts only reopened partially in the last quarter of the year.

The appellant now aware of the respondent's agitation to have action in the appeal shall move and expedite the hearing of the appeal as otherwise, the *chamber Summons* filed by the respondent is invalid for want of form and a supporting affidavit.

Accordingly, Chamber Summons dated 16th August, 2021 is hereby struck out.

No orders on costs.

DELIVERED IN COURT AT NAIROBI THIS 25TH DAY OF NOVEMBER, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

.....and.....