



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

APPEAL NO. E004 OF 2021

BRINKS SECURITY SERVICES LIMITED.....APPELLANT

VERSUS

VINCENT AMWANGA KARANI.....RESPONDENT

(Being an appeal against the Judgment and Decree of the Hon. Lesootia Saitabau

(Principal Magistrate) given in Mombasa ELRC No. 633 of 2019 delivered on 26th January 2021)

R U L I N G

1. On 18th February 2021, the Appellant herein, Brinks Security Services Limited, filed in this Court's Registry a document titled "**MEMORANDUM OF APPEAL**". The Appellant stated in the said document, dated 9th February 2021, as follows:

"TAKE NOTICE THAT BRINKS SECURITY SERVICES LIMITED having been dissatisfied with the decision of the Hon. LESOOTIA in ELRC No. 634 of 2019 given at Mombasa on 26th February 2021, intends to appeal to the High Court against the whole of the said decision. The address for service of the Appellant is care of MULAGO-ARIKA & CO. ADVOCATES, TAIYEBI HOUSE 2ND FLOOR SUIT 6, NKURUMAH ROAD P.O. BOX 2682 – 80100 MOMBASA.

Dated at Mombasa this 9th day of February 2021."

2. The aforesaid document, though expressed to be a Memorandum of Appeal is **NOT** a Memorandum of Appeal. Vide the said document, the Appellant simply gave notice of its intention to appeal against the decision of the Honourable Lesootia in Mombasa ELRC 634 of 2018 given on 26th January 2021. It is not clear under what law or procedure the said notice was filed.

3. Perusal of the Court record before me shows that No appeal has been filed to date, either within the time prescribed by the relevant law or at all.

4. Rule 8(1) (2) of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides as follows:-

"(1) where any written law provides for an appeal to the Court, an appellant shall file a Memorandum of Appeal with the Court within the time specified for that appeal under the written law.

(2) where no period of appeal is specified in the written law under paragraph (1), an appeal shall be filed within thirty days from the date the decision was delivered."

5. Rule 8 (3) of the Employment and Labour Relations Court (procedure) Rules 2016 provides that a memorandum of appeal shall be in Form 1 set out in the schedule, with necessary modifications. It is clear from Form 1 aforesaid that a memorandum of appeal must concisely set out the grounds of appeal, among other requirements.

6. Civil proceedings in the subordinate Court's are generally governed by the Civil Procedure Act and the Civil Procedure Rules. Section 79G of the Civil Procedure Act provides that an appeal to the High Court, in this case to this Court, shall be filed within thirty days from the date of the judgment and/or orders appealed against.

7. Order 42 Rule 1(1) of the Civil Procedure Rules on the other hand provides that the memorandum of appeal shall set forth concisely and

under distinct heads the grounds of objection to the decree or order appealed against without any argument or narrative, and that such grounds shall be numbered consecutively.

8. The notice of intention to appeal referred to in paragraph 2 of this Ruling was, from its wording and content, not meant to be a memorandum of appeal. The document simply expresses an intention to appeal. It is not a memorandum of appeal. It does not set out any grounds of appeal.

9. On 19th October 2021, the “appellant” filed the Notice of Motion dated 18th October 2021 seeking leave to amend the memorandum of appeal dated 9th February 2021, in terms of a draft memorandum of appeal annexed to the supporting affidavit of one Bernard Kyengo Kawea sworn on 18th October 2021.

10. The application was opposed by the Respondent who filed grounds of opposition on 28th October 2021, dated 27th October 2021.

11. When the application came up for hearing on 1st November 2021, counsel for the Respondent argued strongly against the application, and maintained that there was no memorandum of appeal that is capable of being amended, and urged the Court to dismiss the application. Counsel argued that allowing the application would be tantamount to stealing a match by the applicant.

12. On her part, counsel for the “Appellant” urged the Court to allow the application, in the interest of justice.

13. As already stated in this Ruling, there is no appeal on record. Time for filing an appeal against the lower court’s decision said to have been delivered on 26th January 2021 lapsed thirty days from the date of the said decision. There is no memorandum of appeal on record that is capable of being amended. Allowing the applicant to introduce a memorandum of appeal at this stage will be tantamount to allowing the applicant to file an appeal outside the time set by the law. As counsel for the Respondent put it, it will be equivalent to allowing the applicant to steal a match.

14. I find no merit in the application dated 18th October 2018, and I hereby dismiss the same with costs to the Respondent.

15. Either of the parties herein may move the court as may be appropriate as the proceedings herein must be brought to a close.

16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9TH DAY OF DECEMBER 2021

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:

Nafula for Appellant/Applicant

Nasimiyu Respondent