



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 605 OF 2015**

**RUFUS KAIMENYI JOSEPH .....CLAIMANT**

**VERSUS**

**KENYA PORTS AUTHORITY SPORTS CLUB MBARAKI.....RESPONDENT**

**R U L I N G**

1. The application before me is the claimant's Notice of Motion dated 6/9/2016 which seeks for leave to file appeal out of time. The Motion is supported by the affidavit sworn by the claimant on 6/9/2016. The main ground upon which the Motion stands is that the claimant lives in Nairobi and he has no money to meet the cost of instituting his appeal within the statutory limitation period.

2. The Motion is opposed by the respondent vide the replying affidavit sworn by Mr. Daniel Dacha Achayo on 6/12/2016. The respondent has objected to the claimant's Motion on ground that it has been brought by different advocate from the one who was on record as at the date of the impugned judgment and no leave to change advocates has been sought and obtained. In addition the respondent depones that the decreed sum has already been paid in full and as such the matter is fully settled. She has therefore prayed for the dismissal of the Motion on the two grounds that there is no valid reason to warrant the granting of the leave sought, and that the Motion is incompetent.

**ANALYSIS AND DETERMINATION**

3. There is no dispute that I delivered judgment in this suit on 24/6/2016 and that the whole judgment debt has since been paid in full. There is also no dispute that the time set by the law for filing an appeal to the court of appeal has since lapsed. The issues for determination herein are:

(a) Whether the Motion is incompetent

(b) Whether the Motion has merits.

**Incompetent Motion**

4. The respondent's contention that the Motion is incompetent because it was brought by a new advocate after judgment without the leave of the court has not been contested by the applicant. I therefore agree with the respondent that the Motion was filed by a stranger and it is therefore incompetent under Order 9 rule 9 of the Civil Procedure Rules.

**Merits**

5. The reason for delay in filing appeal cited by the applicant is lack of legal fees. In my considered view that is not a valid reason for the delay in filing at least a Notice of Appeal and requesting for typed proceedings which is the obvious sign of a parties interest in preferring an appeal. I therefore agree with the submissions by the respondent that the applicant has not demonstrated any valid reason upon which the discretion of this court to enlarge time can be executed.

**DISPOSITON**

6. The Notice of Motion dated 6/9/2016 is dismissed with costs.

Dated, signed and delivered this 29<sup>th</sup> September 2017

**O. N. Makau**

**Judge**