



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL NO. 13 OF 2015

(Originally Naivasha High Court Civil Appeal No. 71 of 2015)

H. YOUNG & CO. (EA) LTD

APPELLANT

v

SAMSON OKOTH ORENGO

RESPONDENT

(Appeal from the judgment of Hon. P. Gesora (Mr.) Chief Magistrate delivered on 21st May, 2015
in Naivasha CMCC No. 206 of 2014)

RULING

1. The Respondent moved Court through a motion dated 9 August 2016 seeking

1. ***THAT*** the Honourable Court be pleased to confirm the dismissal of the Appeal herein for want of compliance of the Orders issued on the 19th of February 2016.

2. ***THAT*** in the alternative, the Honourable Court do issue Directions herein.

3. ***THAT*** Costs of this application in any event be borne by the Appellant.

2. The Appellant filed a replying affidavit to the motion through its advocate on 20 September 2016.

3. Before the Respondent's application could be heard, the Appellant filed an application on 26 October 2016 seeking that

1. ***THAT*** this application be and is hereby certified as urgent and service of the same be dispensed with in the first instance.

2. ***THAT*** this Honourable Court be pleased to extend and enlarge the time for filing the Record of Appeal and that the Record of Appeal filed herein be deemed duly filed and served.

3. ***THAT*** the costs of this application be in the cause.

4. The Court has gone through the record and has not found any orders issued on 19 February 2016 which the Appellant was required to comply with.

5. In that regard, the request to confirm dismissal of the appeal cannot be based on a failure to comply with the orders of Court.

6. What the Court did on 19 February 2016 was to decline to dismiss the appeal after the Appellant's explanation for failure to file a Record of Appeal was accepted.

7. A Record of Appeal has now been filed (on 14 October 2016), and this is an irregularity the Appellant sought to cure through its application of 26 October 2016.

8. The Respondent might also have anticipated this because in the alternative to dismissal of the appeal, he sought for directions.

9. Logically, by giving directions, the Appellant's application will succeed and in this respect the Court orders as follows

(i) Time for filing Record of Appeal extended and enlarged (if required) up to 13 December 2016.

(ii) Record of Appeal if not yet served to be served before 15 December 2016.

(iii) Appeal is admitted.

(iv) Respondent at liberty to file any appropriate papers before 20 January 2017.

(v) Appellant to file and serve submissions and authorities before 3 February 2017.

(vi) Respondent to file and serve submissions and authorities before 17 February 2017.

10. Court will give a convenient date hereafter for highlighting of submissions if parties so wish.

11. Costs to abide the appeal.

Delivered, dated and signed in Nakuru on this 9th day of December 2016.

Radido Stephen

Judge

Appearances

For Appellant Mr. Musili instructed by Kinyanjui Njuguna & Co. Advocates

For Respondent Ms. Amboko instructed by Wanga Amboko & Co. Advocates

Court Assistant Nixon