



**Kihara t/a Kongo Kihara Foundation v Kibe t/a Bekira Enterprises Ltd & another
(Civil Appeal E025 of 2024) [2024] KEHC 10413 (KLR) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10413 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E025 OF 2024
FN MUCHEMI, J
AUGUST 23, 2024**

BETWEEN

**JEREMIAH KONGO KIHARA T/A KONGO KIHARA
FOUNDATION APPELLANT**

AND

**JOEL KIBE T/A BEKIRA ENTERPRISES LTD 1ST RESPONDENT
ANTONY MACHARIA 2ND RESPONDENT**

RULING

Brief Facts

1. The matter is for determination on whether the appeal ought to be dismissed for want of prosecution following the 2nd respondent's oral application.
2. Dismissal of an appeal is provided for under Order 42 Rule 35 of the Civil Procedure Rules which stipulates as follows:-
 1. Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.
 2. If within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.
3. The appellant herein lodged his appeal on 16th February 2024 following the ruling and order delivered on 18th January 2024 in the Business Premises Rent Tribunal in Nairobi Tribunal Case No. E125 of 2023. The appellant has not listed the matter for directions nor has he filed his record of appeal despite the copy of typed proceedings and ruling having been availed on 29th April 2024.



4. The appellant has only filed an application for stay of execution on 3rd March 2024. Following the court's directions on 23rd April 2024 and he is yet to put in written submissions on the said application. The matter has come up for mention on three occasions whereby the appellant has attended one mention on 23rd April 2024.
5. From the record, it is evident that directions on the appeal have not yet been given on hearing of this appeal for the reason that the record of appeal has not been filed. The original file having been availed on 29/04/2024, the appellant ought to have filed and served the record of appeal. Instead, he put the cart before the horse by filing submissions even before directions on the hearing of the appeal were given. It is not clear whether this action was done inadvertently.
6. In the circumstances, I decline to dismiss the appeal and give the following directions:-
 - a. That the appellant has 21 days to file and serve the record of appeal failure to which this appeal will be dismissed automatically for want of prosecution.
 - b. That following the filing and serving the record of appeal, parties to exchange submissions within 28 days.
 - c. Next mention to be on 30/09/2024.
7. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 23RD DAY OF AUGUST 2024.

F. MUCHEMI

JUDGE

