



Were v Mbori (Suing as the Legal Representative of the Estate of the Late Isaac Mbori Oyugi) (Environment and Land Appeal E008 of 2022) [2023] KEELC 16467 (KLR) (27 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16467 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E008 OF 2022
GMA ONGONDO, J
MARCH 27, 2023**

BETWEEN

JOSEPH OCHILO WERE APPELLANT

AND

EDWARD OGANGA MBORI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE ISAAC MBORI OYUGI) RESPONDENT

RULING

1. This appeal by way of a memorandum of appeal dated February 17, 2022 was lodged in court on April 5, 2022 by the appellant, Joseph Achilo Were through the firm of Odhiambo Ogutu and Company Advocates founded on five grounds including that: -
 - a) The Learned Trial Magistrate erred in law and fact in failing to find that the Appellant did not trespass into the suit property known as Parcel No. Central Kasipul/Kamuma/1875.
 - b) The Learned Trial Magistrate erred in law and fact in failing to grant the Appellant sufficient audience to put his defense.
2. On January 18, 2023, this court ordered as directed, inter alia;

“The appellant’s Counsel to file and serve record of appeal in its complete form within 21 days from this date in default, the appeal be dismissed in the spirit of article 159 (2) (b) of the Constitution of Kenya, 2010 and section 3 of the Environment and Land Court Act, 2015 (2011).”
3. Kisaka, learned counsel for the respondent, Edward Oganga Mbori has implored the court to dismiss this appeal as the appellant’s counsel duly served, has failed to comply with this court’s orders of January 18, 2023.



4. Indeed, the appellant's counsel was duly served has discerned in the affidavit of service sworn on March 9, 2023 by Lucia Mutiva, a duly authorized process server.
5. The appellant's Counsel has neither complied with the orders of January 18, 2023 nor given any reasons for failure to comply with the same.
6. In the circumstances, I find the application by counsel for the respondent meritorious.
7. *A fortiori*, this appeal be and is hereby dismissed with costs to the respondent.
8. It is ordered accordingly.

DELIVERED, DATED AND SIGNED AT HOMA BAY THIS 27TH DAY OF MARCH 2023.

G.M.A ONG'ONDO

JUDGE

Present.

1. Ms. Kisaka, learned counsel for respondent
2. **Mutiva and Ochumba, court assistants.**

