



**Mwangi & another v Mutinda (Minor Suing through Father and Next Fried Boniface Amudala Isaya) (Civil Suit E131 of 2021) [2024] KEHC 13216 (KLR) (Civ) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13216 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**CIVIL SUIT E131 OF 2021**  
**JN MULWA, J**  
**OCTOBER 31, 2024**

**BETWEEN**

**JAMES MUBIRA MWANGI ..... 1<sup>ST</sup> APPELLANT**  
**MOSES WAMBANI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ISAAC MUTINDA ..... RESPONDENT**  
**MINOR SUING THROUGH FATHER AND NEXT FRIED BONIFACE**  
**AMUDALA ISAYA**

**JUDGMENT**

1. The Record of Appeal dated 5/06/2023 was filed on 9/06/2023. However, the trial court proceedings had not been filed together with the Record of Appeal. On 17/10/2023 the Appellant sought to be granted 30 days to file a Supplementary Record which was granted.  
When the Appeal was listed for directions on 20/05/2024, the Appellant had not filed the Supplementary Record of Appeal upon which 21 days more were granted to the Appellant.
2. Despite the Appellants not having filed the Supplementary Record, the Appellant proceeded to file its written submissions dated 16/05/2024. The Respondent had not filed its submissions.
3. The court has perused the index to the Record of Appeal. Conspicuously missing are two crucial documents;
  - a. The trial court proceedings in CMC's case No. 5436 of 2019
  - b. Judgment and Decree from the trial court case.



4. Order 42 Rule 13 (4) (f) of the Civil Procedure Rules provides a list of documents and pleadings that must be filed together with the record of appeal as follows:
  - a. The Memorandum of Appeal;
  - b. The Pleadings;
  - c. The notes of trial Magistrate made at the hearing;
  - d. The transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
  - e. All affidavits, maps and other documents whatsoever put in evidence before the Magistrate;
  - f. The judgment, order or decree appealed from and where appropriate the order (if any) giving leave to appeal.

Provided that:-

- ii. The judge may dispense with production of any document or part of a document, which is not relevant other than those specified in paragraphs (a), (b) and (f).
5. The Supreme Court of Kenya in the case of *Bwana Mohamed Bwana & Silvano Buko Bonaya & 2 Others* [2015]eKLR held that:-

“Without a record of appeal, a court cannot determine the appeal cause before it. Thus if the requisite bundle of documents is omitted, the appeal is incomplete and defective for failing the requirements of law...”

6. In the instant Appeal the Appellant has failed to file pleadings stated at (f) above despite numerous opportunities granted to file the said documents. It is therefore evident that the Appeal before this court is incomplete and therefore incomplete. It is struck out with no costs to the Respondent.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER 2024.**

**J. N. MULWA**

**JUDGE**

