



Zenko Kenya Limited v Uchumi Selection Storels Molo Limited (Commercial Appeal E160 of 2023) [2024] KEHC 16720 (KLR) (Commercial and Tax) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16720 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E160 OF 2023
BM MUSYOKI, J
DECEMBER 20, 2024**

BETWEEN

ZENKO KENYA LIMITED APPLICANT

AND

UCHUMI SELECTION STORELS MOLO LIMITED RESPONDENT

RULING

1. This matter was supposed to come for judgement today but for reasons given hereinbelow this court will deliver a ruling instead.
2. The matter had been mentioned for pre-trial directions on several occasions beginning 6-11-2023. All through, the appellant had informed the court that it had filed its complete record of appeal. When the matter came before me 1-10-2024, the appellant through its advocate told me that it had filed its submissions and asked for a date for judgment. However, in my discretion, I decided to give the respondent who had not filed submissions one more chance to comply. I gave a mention date for 17-10-2024 and I made an order that the respondent be served with my directions to enable it comply by filing its submissions.
3. When the matter came for mention on 17-10-2024, the respondent was absent and had not filed submissions despite its advocates having been served. The appellant informed the court that its record of appeal was complete and correct and asked the court to give a date for judgement. I reserved the matter for judgment today. However, when I started writing the judgement, I noticed that the record of appeal filed in this court's case tracking system on 21-07-2023 did not contain the trial court's proceedings, decree and judgment. In addition, the trial court's file and original record have never been forwarded to this court despite three orders by the Deputy Registrar calling for the trial court file having been made on 20-02-2024, 18-03-2024 and 6-06-2024. In the index to the record of appeal, the



appellant had indicated at item 13 that other documents would be filed with the leave of the court. Perhaps the appellant was referring to the missing proceedings, the judgment and decree.

4. Without the lower court proceedings, judgment and decree, this court finds it hard to write a judgment. In view of the above, I make the following orders.
 - a. The appellant shall file and serve a supplementary record of appeal with the lower court's proceedings, judgment and decree within the next sixty (60) days from the date of delivery of this ruling failure to which this appeal shall stand dismissed for want of prosecution without any further reference to this court.
 - b. The Deputy Registrar shall facilitate forwarding of the trial court file and record within the same period.
 - c. This matter shall be mentioned before the Deputy Registrar to confirm compliance and reallocation on a date to be given after delivery of this ruling.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Onyango Okoth for the appellant and in absence of the respondent.

