



**Thuranira v Munene (Civil Appeal 150 of 2021)
[2023] KEHC 27210 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27210 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL 150 OF 2021
EM MURIITHI, J
DECEMBER 20, 2023**

BETWEEN

MWENDA THURANIRA APPELLANT

AND

EDITH KAJUJU MUNENE RESPONDENT

RULING

1. The Respondent herein, Edith Kajuju Munene, instituted succession proceedings in respect of the estate of Munene Thuranira Agoromo alias Munene Thuranira alias Agoromo Munene T alias Munene T. Agoromo alias Agoromo M Thuranira (Deceased) in Meru Chief Magistrate's Court Succession Cause No. 92 of 2018 in her capacity as the deceased's widow.
2. This appeal was lodged against the judgment of the trial court that was delivered on 29th September, 2021. In the impugned judgment, the trial magistrate issued orders distributing the whole estate of the deceased as proposed by the Respondent in her further affidavit sworn on 18th July, 2019 in support of her summons application for confirmation of grant dated 3rd June, 2019.
3. Aggrieved by the said decision, the Appellant has raised eight (8) grounds of appeal that are contained in the Memorandum of Appeal dated 26th October, 2021. I shall however not delve into the merits of this appeal for the reason that the record of appeal filed before this Court is incomplete.
4. As pointed out by counsel for the Respondent in his written submissions, the proceedings of 3rd March, 2021 have been omitted from the record of appeal before this Court yet they are crucial in the determination of the issue raised by the Appellant on whether the trial court had jurisdiction to determine the proceedings before it.
5. From the Record of Appeal, particularly the copy of proceedings of the trial court found between pages 193 and 210 of the said record, it is evident that the record of proceedings before the trial court that was presented before this Court is incomplete as there are multiple pages missing from it including page



no. 30 which the Respondent has specifically pointed out. The original record of proceedings before the trial court was also not forwarded to this Court.

6. The Supreme Court of Kenya, in the case of *Bwana Mobamed Bwana v Silvano Buko Bonaya & 2 others* [2015] eKLR held as follows at paragraph 41:

“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 incompetent and defective, for failing the requirements of the law. A Court cannot exercise its adjudicatory powers conferred by law, or the *Constitution*, where an appeal is incompetent. An incompetent appeal divests a Court of the jurisdiction to consider factual or legal controversies embodied in the relevant issues.”

7. However, in the provisions on appeal before the high court, which are governed by order 42 of the *Civil Procedure Rules*, Rule 13 thereof impliedly makes provision for filing of supplementary record by the appellant or the respondent in cases where the Record is incomplete, as follows:

“[Order 42, rule 13.] Directions before hearing.

13.

- (1) On notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the appellant shall cause the appeal to be listed for the giving of directions by a judge in chambers.
- (2) Any objection to the jurisdiction of the appellate court shall be raised before the judge before he gives directions under this rule.
- (3) The judge in chambers may give directions concerning the appeal generally and in particular directions as to the manner in which the evidence and exhibits presented to the court below shall be put before the appellate court and as to the typing of any record or part thereof and any exhibits or other necessary documents and the payment of the costs of such typing whether in advance or otherwise.
- (4) Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say:
 - (a) the memorandum of appeal;
 - (b) the pleadings;
 - (c) the notes of the 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—

(i) a translation into English shall be provided of any document not in that language;

(ii) the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).”

8. The Court should not have allowed the matter to proceed to hearing of the appeal without crucial documents that had been before the trial court in the matter appealed from. Indeed, the Court granted the appellant leave to file a supplementary record of appeal but what was filed in the Supplementary Record of Appeal dated 3/2/2023 was the certified copy of the judgment.
9. Accordingly, the Court shall grant leave of Court to file a further Supplementary Record to present before the court all pleadings, evidence and submissions which were adduced before the trial court, which may be missing from the present records.
10. In the interest of justice and expeditious disposal of cases, the court shall grant a limited time for compliance with these directions.

Orders

11. Accordingly, for the reasons set out hereinabove, the Court makes the following orders:
12. The appellant shall within fourteen (14) days file a Supplementary Record of Appeal attaching such pleadings, exhibits and submissions presented before the trial court and in default, the Respondent shall within fourteen (14) days file the necessary Supplementary Record of Appeal.
13. The Deputy Registrar of the Court shall avail the trial court file before this court.
14. The appeal shall be mentioned on 23/1/2024 for purposes of directions as to hearing.
15. Costs in the appeal.

Order accordingly.

DATED AND DELIVERED ON THIS 20TH DAY OF DECEMBER, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kimenyi for the Appellant.

Mr. Mwendwa with Mrs. Maheli for the Respondent.

