



**Ekiru v Esther Chepchirchir (Suing as the legal representative of the Estate of Christopher Koech Tirieta - Deceased) (Land Case Appeal E024 of 2024) [2025] KEELC 1335 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1335 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
LAND CASE APPEAL E024 OF 2024  
LN MBUGUA, J  
MARCH 19, 2025**

**BETWEEN**

**PAUL WANYAMA EKIRU ..... APPELLANT**

**AND**

**ESTHER CHEPCHIRCHIR (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER KOECH TIRIETO - DECEASED) ..... RESPONDENT**

**RULING**

1. This suit was filed by way of a memorandum of appeal dated 23.9.2024 in which the appellant is challenging the decision of Hon James Halekia delivered on 17.9.2024 in Maralal Principal Magistrates Court ELC E010 OF 2022. The appellant also filed an application dated 25.9.2024 seeking orders of stay of execution of the said judgment, but the same was compromised in terms of prayer no. 3 thereof.
2. The appellant then filed another application dated 9.1.2025 seeking leave to tender additional evidence or in the alternative to declare the proceedings of the trial court as a Mistrial.
3. The prosecution of the application and the suit have been hampered by the fact that the appellant was not availing a Record of Appeal and when he did so, it was incomplete.
4. On 4.3.2025, counsel for the respondent informed the court that the Record of Appeal had no pleadings, list of documents and the decree. To this end, the court gave self executing orders directing the appellant to file and serve a complete Record of Appeal by 11.3.2025 failure to which the Appeal would stand as dismissed.
5. On 12.3.2025, the matter was mentioned before this court where it emerged that the appellant had filed a supplementary Record of Appeal. However, counsel for the respondent indicated that the said record was still incomplete as the following documents were still missing;



- a. The decree
  - b. Proceedings of 16.7.2024, 19.8.2024, and 17.9.2024.
6. Thus counsel for the respondent urged the court to effect the directions given on 4.3.2025.
  7. In response, the appellant informed the court that what he has availed to the court is what he has.
  8. The question falling for determination is whether this suit should be dismissed in view of the self executing orders given on 4.3.2025.
  9. The provisions of Order 42 rule 13 (4) of the Civil Procedure rules stipulate that:

“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)”
    10. Thus a judgment can suffice in place of a decree and in the case at hand, the judgment of the court has been availed. The court declines to dismiss the suit on the basis of a missing decree.
    11. On proceedings, the Court has perused the lower court file vis a vis the proceedings availed by the applicant. Indeed the mentioned proceedings are missing, but that is in so far as the hand written notes are concerned. The typed proceedings which have been “certified as true copies of the original” contained in the lower court file similarly do not capture the proceedings of 16.7.2024, 19.8.2024, and 17.9.2024. Thus the appellant cannot be faulted for not availing the aforementioned proceedings.
    12. A perusal of the hand written notes in the original record indicate as follows in relation to the missing proceedings:

“On 16.7.2024; N/A

Mention 30.7.2024 for directions



On 19.8.2024;

Mr. Munyeri present for defendant.

Mr. Larpei for plaintiff absent

Mr. Munyeri: I served my colleague on the Mention Notice to my colleague. I have also filed my written submissions. I pray for judgment date.

Court: Judgment 15.10.2024. Notice to issue.

On 17.9.2024, there is nothing save an empty Coram”

13. I find that in terms of the provisions of Order 42 Rule 13 (4) (f) (ii) the alleged missing proceedings have no bearing on the determination of the matter at hand and are hereby dispersed with. In the circumstances, I find that the dictates of justice demand that the matter proceeds on the basis of what has so far been availed by the appellant. It is so ordered. The case is therefore to be heard on priority basis.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 19<sup>TH</sup> DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Appellant - present in person

Lesikito holding brief for Ngetich for Respondent

Nancy Mwangi – Court Assistant

