

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

HIGH COURT CIVIL APPEAL NO. 22 OF 2018

DAVID MACHANGA GATERI.....APPELLANT

VERSUS

PHINEARS NJAGI MUNYI.....RESPONDENT

(having been aggrieved and dissatisfied by the judgment of S.M.S. Soita CM in the

*Civil Suit No. 49 of 2017 delivered on 21st September, 2017 the appellant wishes
to appeal against the whole ruling and/or order and puts forth the following grounds)*

BETWEEN

DAVID MACHANGA GATERI.....APPLICANT

VERSUS

PHINEARS NJAGI MUNYI.....RESPONDENT

RULING

1. This matter was coming for Judgment however, upon perusal of the record I realize that there is no evidence on record to show that the respondent was served with the supplementary record of appeal and the appellants written submissions, and this court had given directions that this appeal be disposed of by way of written submissions.
2. On 1st of July, 2019 the court had ordered that the respondent files the record of appeal within 14 days and serve on the respondent within 14 days together with the submissions.
3. This record of appeal was filed on 11th November, 2019 and the submissions were also filed on 11th November, 2019 which clearly shows that they were not filed within time. The order for giving a date for judgment was pre-mature as there was no proof that the respondent was served within time.
4. It would be unfair to give Judgment without the benefit of the submissions by the respondent, and without proof that he was served with the submissions and the supplementary record of appeal.
5. I therefore, direct that the matter be listed for mention in the presence of both parties for the respondent to confirm that he was served with the supplementary record of appeal and the submissions and a fresh date for judgment be taken.

Date, signed at Kerugoya this 29th day of May 2020

L.W. GITARI

JUDGE