



REPUBLIC OF KENYA



**Rinka v Ngeeti (Appeal 40 of 2021) [2023] KEELC 22425 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22425 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KILGORIS**  
**APPEAL 40 OF 2021**  
**EM WASHE, J**  
**DECEMBER 14, 2023**

**BETWEEN**

**JOSEPH MUIYA RINKA ..... APPELLANT**

**AND**

**ISAAC NGEETI ..... RESPONDENT**

**RULING**

1. The Respondent (hereinafter referred to as “the Applicant”) filed a Notice of Motion Application dated 25<sup>th</sup> July 2023 (hereinafter referred to as “the present Application”) seeking for the following orders against the Appellant (hereinafter referred to as “the Respondent”).
  - a. That this Application be certified urgent and the same be heard on priority basis.
  - b. That the documents filed on the 29<sup>th</sup> of June 2023 and served upon the Respondent’s Advocates be expunged from the Court Record as the same are not Records of Appeal.
  - c. That the Appellant failure to file Record of Appeal within the stipulated time of 7 days granted by the Court, this file be closed.
  - d. The appellants be ordered to pay the costs of the Appeal.
2. The Applicant has premised the prayers sought in the present Application on the following grounds
  - i. The Respondent herein is not serious and/or desirous of filing any lawful Record of Appeal.
  - ii. The Respondent is simply buying time to enable him stay of the suit property without any legitimate ownership.
  - iii. The Respondent’s actions of acting in person rather than engage an Advocate is a decoy to get sympathy from the Honourable Court.



- iv. The Record of Appeal filed on the 29/06/2023 was filed outside the time allowed by the Honourable Court.
  - v. Consequently therefore, this Honourable Court should expunge the Record of Appeal filed on the 29/06/2023 and direct this file to be closed for purposes of bring the litigation to an end.
3. The present Application was indeed served on the Respondent who opposed the same by filing a Replying Affidavit sworn on the 18<sup>th</sup> of August 2023.
  4. Parties thereafter were directed to file their submissions which was complied with by both parties.
  5. This Honourable Court has indeed gone through the present Application, the Replying Affidavit and the submissions thereof and hereby identify the following issues for determination.  
Issue No. 1- Should the respondent's documents dated 29/06/2023 be expunged from the court records?  
Issue No.2- Should the present filed be closed?  
Issue No. 3- Who bears the costs of the present application?
  6. The issues for determination having been duly identified as hereinabove, the same will now be discussed as below.

**Issue No. 1- Should the respondent's documents dated 29/06/2023 be expunged from the court records?**

7. The first issue for determination is whether the Respondent's Record of Appeal filed on the 29/06/2023 should be expunged from the Court proceedings or not.
8. The Applicant prayer is based on two main grounds namely the failure to file the said Record of Appeal within the stipulated time and secondly is that the documents filed on the 29/06/2023 do not constitute a Record of Appeal as provided by the law.
9. On the first ground of the Respondent filing the Record of Appeal dated 29/06/2023 out of time, the Applicant submitted that this Honourable Court through its judgement pronounced on the 27/04/2023 granted leave to the Respondent to prepare, file and serve a proper Record of Appeal within 14 days from the said date.
10. However, the Respondent failed to prepare, file and serve the said Record of Appeal within the provided period of 14 days but instead filed the same on the 29/06/2023 which was way after the provided timeframe.
11. The Respondent on the other hand filed a Replying Affidavit on the 21/08/2023 but after a through perusal of the contents herein by this Honourable Court, there was no response to explain why the Respondent failed to comply with the Honourable Court's directions to prepare, file and serve the Record of Appeal within 14 days.
12. Indeed, this Honourable Court on the 27/04/2023 pronounced itself on the validity of the Record of Appeal that had been filed on the 12/10/2022.
13. According to the Judgement pronounced on the 27/04/2023, the Respondent's Record of Appeal was found to be defective for lack of various documents and struck out.
14. However, the Honourable Court allowed the Respondent to prepare and file a new Record of Appeal within 14 days from the 27/04/2023 if he so wished.



15. The Respondent unfortunately did not comply with this aspect of the judgement pronounced on the 27/04/2023 and instead filed the Record of Appeal on the 29/06/2023.
16. Clearly therefore, the Record of Appeal filed on the 29/06/2023 was filed more than 60 days from the 27/04/2023 as opposed to the 14 days pronounced in the judgement of 27/04/2023.
17. It therefore goes without saying that the Record of Appeal filed on the 29/06/2023 was filed out of time and is therefore irregular and unlawful.
18. The second ground as to why the Record of Appeal filed on the 29/06/2023 should be expunged is because it does not constitute a proper Record of Appeal as envisaged in the [Civil Procedure Rules](#), 2010 and the [Appellate Jurisdiction Act](#), 2010.
19. Again, the Respondent in his Replying Affidavit sworn on the 21/08/2023 did not offer any response to this issue.
20. Ideally, a Record of Appeal is a collection of various Court pleadings and records which are compiled for purposes of an Appellate Court to evaluate the issues raised in the Trial Court, the proceedings therein and the subsequent outcome.
21. To be able to achieve this exercise, the Appellant is required to compile a Record of Appeal which should include the Memorandum of Appeal, the Pleadings giving raise to the Appeal, the certified copies of proceedings in the Trial Court, a certified Copy of the Judgement/Ruling and the Certified Copy of the Decree appealed.
22. In the Record of Appeal filed on the 29/06/2023, the Respondent has only filed a copy of a Ruling pronounced on 8<sup>th</sup> November 2021 which is not under Appeal, correspondences from various offices and a Death Certificate of the father to the Appellant.
23. These documents contained in the Respondent's Record of Appeal are with respect to the Respondent misguided and misplaced and cannot purport to create a Record of Appeal as anticipated by law.
24. In other words, the Record of Appeal filed on the 29/06/2023 is again fatally defective and can not be deemed to be a Record of Appeal for purposes of admission by this Honourable Court.
25. In essence therefore, the documents filed by the Respondent on the 29/06/2023 do not comply with the directions of this Honourable Court on the 27/04/2023 and should be expunged forthwith.

#### **Issue No.2- Should the present filed be closed?**

26. The second issue for determination is whether this file should now proceed to be closed or not.
27. The Applicant is of the view that once this Honourable Court makes a finding that there is no Record of Appeal filed within the time provided in the judgement pronounced on the 27/04/2023, then litigation should come to an end by the file being closed.
28. The Applicant argued that the Respondent has been using the Court process and in particular the issue of an Appeal to occupy the Applicant's land which he had been ordered to vacate by the Trial Court.
29. However, since the Respondent was granted, a Stay pending Appeal on the 8/11/2021, no proper Record of Appeal has ever been filed and all that has been happening is numerous applications by the Respondent.



30. The Respondent has through the Replying Affidavit filed on 21/08/2023 stated that it is the Applicant's Counsel that has sabotaged his case by tempering with his documents amongst other allegations.
31. The Honourable Court has indeed gone through the proceedings in this Appeal file and notes that indeed, the Respondent has been unable to prepare, file and serve a proper Record of Appeal for the last three year from 2020.
32. It is important every litigant has to organise his case in a manner that is coherent and clear of the issues for determination by the Appellate Court.
33. Where a litigant elects to act in person, then such a litigant is assumed to be well versed with the issues of legal procedure and/or documents that will advance his cause of justice.
34. Unfortunately, the Respondent in this application who is the Appellant seems to have elected to act in person but does not appreciate the legal procedures and/or legal requirement to advance his cause of justice.
35. This Honourable Court has been patient and even encouraged the Respondent to seek legal assistance but he has continually declined to do so.
36. The Respondent has been enjoying the orders issued on the 08/11/2021 to the disadvantage of the Applicant herein without taking the necessary efforts to conclude his intended Appeal.
37. In such a scenario, the Honourable Court is of the considered view that litigation should come to an end so that the Applicant can enjoy the fruits of his judgement pronounced on the 29/05/2020.
38. The rights of the Respondent who says is a layman should not stumble of the rights of the Applicant without an end.
39. To this end, this Honourable Court is of the opinion that in the absence of a competent Memorandum of Appeal as well as a Record of Appeal, then there is nothing more to be done in this proceeding and the file should be closed forthwith unless otherwise.

### **Issue No. 3- Who bears the costs of the present application?**

40. The last issue for determination is who should bear the costs of the present Application.
41. The Applicant herein has been successful in the prayers sought therein and therefore the Respondent is condemned to pay the costs.

### **Conclusion.**

42. In conclusion therefore, this Honourable Court hereby makes the following Orders as regards the Notice of Motion Application dated 25<sup>th</sup> July 2023; -
  - A. The record of appeal filed on the 29<sup>th</sup> of June 2023 does not comply with the provisions relating to the preparation and documents required to be in a record of appeal.
  - B. The purported record of appeal filed on the 29<sup>th</sup> of June 2023 be and is hereby expunged from the court record for being incomplete & filed out of time.
  - C. The respondent will bear the costs of this Application.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 14<sup>TH</sup> OF DECEMBER 2023.**



**EMMANUEL.M.WASHE**

**JUDGE**

**IN THE PRESENCE OF:**

COURT ASSISTANT: Ngeno

ADVOCATES FOR THE APPELLANT: Appellant in Person

ADVOCATES FOR THE RESPONDENT: Ms. Chemutai holding Brief Sagwe

