



**Mwai v Muita & 4 others (Environment and Land Appeal
E010 of 2023) [2025] KEELC 3092 (KLR) (2 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3092 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E010 OF 2023**

LN MBUGUA, J

APRIL 2, 2025

BETWEEN

LAWRENCE KINYUA MWAI APPELLANT

AND

FLORENCE WAIRIMU MUITA 1ST RESPONDENT

DISTRICT LAND REGISTRAR 2ND RESPONDENT

NYARIGINU FARMERS LIMITED 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

CHIEF LAND REGISTRAR 5TH RESPONDENT

*(Being an appeal from the ruling of Hon Kithinji (CM) delivered in
Nanyuki Law Courts on 12.7.2023 in CMELC No. E002 of 2021)*

JUDGMENT

1. There is a memorandum of appeal filed on 11.10.2023 in this court file. However, the proceedings of 7.11.2023 indicate that the appellant was seeking for time to file an appeal out of time.
2. Despite the fact that the validity of the memorandum of appeal is in question, the appellant apparently filed an application dated 26.7.2023 seeking orders to set aside the ruling of the magistrate dated 12.7.2023. He also filed another application dated 9.10.2021 seeking orders of stay of of the proceedings before the magistrates court in Nanyuki CM ELC E002 OF 2021. In a ruling delivered on 13.11.2024, both applications were dismissed and the appellant was directed to set the matter down for hearing. The court also gave directions on the filing of submissions, of which the appellant indicated that he would rely on the submissions he had filed earlier on (the ones relating to the prosecution of his applications). Nevertheless, when I took over the matter on 17.2.2025, the court gave the appellant an opportunity to file any further submissions. He complied. The respondent too has filed submissions.



3. This being a first appeal, the court reminds itself of its primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the evidence and then determine whether the conclusions reached by the learned magistrate are to stand and give reasons either way. That was the pronouncement of the court in the case of; *Selle and Another Versus Associated Motor Boat Company Ltd & Others* [1968] Ea 123, *Abok James Odera t/a A.J Odera & Associates Vs John Patrick Machira t/a Machira & Co. Advocates* (2013) eKLR.
4. In the case at hand, what is the court supposed to evaluate and analyse, after all, the record of appeal filed on 4 .12. 2023 does not contain the requisite documents as set out under Order 42 Rule 13 (4) of the civil procedure rules.
5. In *Ready Consultancy Co. Ltd v Charo & another (Appeal E037 of 2022)* [2024] KEELRC 166 (KLR) (8 February 2024) (Judgment) Neutral citation: [2024] KEELRC 166 (KLR), the court while dismissing the suit for want of completeness of the record stated thus;

“In the absence of the trial Court’s proceedings, there is absolutely nothing on record for this Court, being a first appellate Court to review, to re-evaluate and to consider in determining the merits or otherwise of the appeal herein. The appeal is hollow and incompetent and must, therefore, fail”.
6. Further and as clearly submitted by the respondent, the appeal was filed out of time and is therefore bad in law, having been filed on 4.12.2023 yet the ruling in question was delivered on 12.7.2023.
7. The upshot of my findings are that this appeal is invalid for want of completeness of the record of appeal and is invalid for having been filed out of time. The appeal is therefore dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 2ND DAY OF APRIL 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

