



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Ahmed & another (Civil Appeal E798 of 2023)
[2025] KEHC 2669 (KLR) (Civ) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E798 OF 2023

JN MULWA, J

MARCH 6, 2025

BETWEEN

HOSEA MAINA APPELLANT

AND

MIRIAM AHMED 1ST RESPONDENT

CITY HOPPER COMPANY LIMITED 2ND RESPONDENT

*(Being an Appeal against the Judgment and Decree in Nairobi Milimani CMCC
No. E1635 of 2022 delivered on 27th July 2023 by Hon. H. M. Mwangi (PM))*

JUDGMENT

1. The Appeal and Cross-Appeal before this Court arose from the judgment of the trial court delivered on 27/7/2023 in Nairobi Milimani CMCC No. E1635 of 2022 in which Miriam Ahmed (hereafter called the 1st Respondent) had sued Hosea Maina (hereafter called the Appellant) and City Hopper Company Ltd (hereafter called the 2nd Respondent) for general and special damages arising from a road traffic accident. Being aggrieved by the trial Court's decision the Appellant preferred an appeal. The 2nd Respondent also lodged an appeal against the said decision by way of a Cross-Appeal.
2. Before proceeding to address the gist of the Appeal and Cross-Appeal, it would be appropriate for this Court to address a particular issue that has drawn its attention in limine in the course of perusal of the Record of Appeal before the Court that touches on the competency of both the Appeal and the Cross Appeal.



Whether the appeal and cross-appeal are competent?

3. The Appeal was lodged on or about 17/08/2023. Later, on 15/11/2023, this Court issued directions that the Appellant file its Record of Appeal within sixty (60) days of the said date, and a date set for directions on 22/4/2024. It would appear from the record before this Court that when the matter came up before the Deputy Registrar (DR) on the latter date, it was flagged for disposal under the Judiciary's Rapid Results Initiative (RRI) program intended for timely and expeditious disposal of pending suits and appeals.
4. On 13/6/2024 further directions were taken on the Appeal before the Deputy Registrar (DR) on filing of submission and a supplementary Record of Appeal by the 2nd Respondent. On 30/7/2024 subsequent directions on submissions were taken with the matter being slated for judgment on 06/03/2024.
5. Why do I digress on the above? A cursory perusal of the Appeal shows that the Record of Appeal is non-compliant with provisions of Order 42 Rule 13(4) of the Civil Procedure Rules (CPR). The forestated provision provides 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)".
6. This Court, having perused the Record of Appeal notes that some of the documents are lacking, and therefore incomplete. In particular, the missing documents are copies of the proceedings of the trial Court, certified and the decree being appealed. These are the documents stated at Order 42 Rule 13 (4) (c) and (f) as non-dispensable in a Record of Appeal, and by extension the Cross Appeal.
 7. The omission of the forestated documents, inadvertently or otherwise goes to the competency of the appeal before this Court and whether this Court can entertain the Appeal, as is. The exhortation and



use of the word shall in Rule 13(4) makes their inclusion mandatory, and to satisfy compliance or inclusion of the relevant documents to the Record of Appeal, in order to render a decision thereon.

8. Further, it is notable that since 15/11/2023 the Appellant failed and or opted not to file a complete record of appeal within the sixty (60) days as directed by this Court, further opportunity extended to the Appellant by the Deputy Registrar (DR) on 13/6/2024. Clearly all indication herein points towards a flippant litigant unwilling to competently prosecute its appeal.
9. The 2nd Respondent equally filed a Cross Appeal but equally failed to mitigate the competency of the appeal despite intimation of its intent to file a Supplementary Record of Appeal on 13/06/2024 to which the court graciously granted. Consequently, on accord of the omitted documents this Court cannot possibly proceed to render a judgment on both the Appeal and Cross-Appeal.

Disposition

10. For the foregoing the Court is constrained to strike out the Appeal and the Cross-Appeal for want of competence with costs to the 1st Respondent, to be shared between the Appellant and the 2nd Respondent.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

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JANET MULWA
JUDGE

