



REPUBLIC OF KENYA



**Uplands Premium Dairies & Food Ltd v Kadolta Packaging Limited (Civil Appeal E095 of 2024) [2025] KEHC 8415 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8415 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E095 OF 2024  
DO CHEPKWONY, J  
JUNE 16, 2025**

**BETWEEN**

**UPLANDS PREMIUM DAIRIES & FOOD LTD ..... APPELLANT**

**AND**

**KADOLTA PACKAGING LIMITED ..... RESPONDENT**

*(Being an Appeal from the Ruling of Hon. P. Muholi (MR.) PM delivered on 30th May, 2024 in Githunguri PMCC No.MCC.E040 of 2021)*

**RULING**

1. Before the court is the Notice of Motion application dated 15<sup>th</sup> April, 2025 seeking the following orders:-
  - a. That the Record of Appeal dated 25<sup>th</sup> February, 2025 be struck out for being materially, defective, incomplete and non-compliant with the requirements of the law.
  - b. That the costs of this application and the appeal be awarded to the Respondent.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Peter Kayugira sworn on the instant date. According to the Applicant/Respondent's counsel, the Appellant filed a Record of Appeal in which he has noted material omissions and procedural irregularities as it has not included the Statement of Defence dated 13<sup>th</sup> September, 2021 which forms part of core pleadings whose omission is detrimental. He also adds that the Replying Affidavit dated 7<sup>th</sup> February, 2024 in the Record of Appeal is incomplete since it does not contain the attachment of a Consent dated 3<sup>rd</sup> August, 2023 which formed the basis of the partial Judgment which was entered against the Appellant for the sum of Kshs. 2,312,016.37/= and is critical in the resolution of the appeal.
3. The Respondent further holds that the Appellant also failed to include the responses that were filed by the garnishee in respect to the application dated 14<sup>th</sup> May, 2024. The Respondent has therefore urged



that the Record of Appeal is defective and incapable of facilitating a fair and just determination of the appeal.

4. I have gone through the Court Tracking System (CTS) and established that the application was served upon the Appellant and there is an Affidavit of service on record sworn by Ashlyne Alwanga Kioge sworn on 5<sup>th</sup> May, 2025 through their email to confirm this. The court notes that the Appellant has not responded to the application and therefore the same remains unopposed.
5. Be that as it may, the court is still required as is its duty to consider whether the application has merit to warrant the issuance of orders being sought. It is trite that a Record of Appeal must be complete to assist the court in the full determination of the appeal. In order to establish whether the record of appeal herein is complete or not, the Court must examine the original record of proceedings to establish whether all the requisite documents have been included and filed. The lower court record has not been availed for the scrutiny and hence the Applicant/Respondents claim cannot be verified. This is in line with the provision of Section 79A and 79B of the Civil Procedure Act.
6. Section 79A states as follows:-

79A. No decree to be altered for error not affecting merits or jurisdiction

“No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court”.

7. Section 79B goes on to provide for summary rejection of an appeal in the following terms:-

79B. Summary rejection of appeal

“Before an appeal from a subordinate court to the High Court is heard, a Judge of the High Court shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of a decree or order appealed against”.

8. For these reasons, the court proceeds to direct that:-
  - a. The Deputy Registrar to call for and avail the original record of proceedings in Githunguri Civil Case No. E040 of 2021 within fourteen (14) days from the date hereof.
  - b. Mention on 30<sup>th</sup> June, 2025 to confirm availability of the lower court file and further directions on ruling date.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 16<sup>TH</sup> DAY OF JUNE, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Kioge holding brief for Mrs. Kanyugira counsel for Respondent

Court Assistant - Martin

