



REPUBLIC OF KENYA



**Cheruiyot v Little Five Contractors (Civil Appeal E160 of 2024)
[2025] KEHC 10737 (KLR) (Civ) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10737 (KLR)

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

CIVIL

CIVIL APPEAL E160 OF 2024

WM MUSYOKA, J

JULY 21, 2025

BETWEEN

NICKSON KIPKORIR CHERUIYOT APPELLANT

AND

LITTLE FIVE CONTRACTORS RESPONDENT

(Appeal from judgement and decree, in Nairobi SCCC No. E4743 of 2023, by Hon. Wamae EM Muindi, Resident Magistrate/Adjudicator, of 22nd December 2023)

RULING

1. The matter was placed before me, on 7th May 2025, during the service week, and I allocated to it a date for judgement, being 4th July 2025, as it appeared that both sides had filed written submissions.
2. When I settled to write the judgement, it has transpired, from what I can see from the record, that the file was never placed before a Judge, in terms of Order 42 rule 13(1) of the Civil Procedure Rules, for directions. Consequently, it was not ready for hearing and determination, as no Judge directed that the same be disposed of by way of written submissions.
3. I reserved it for judgement on the understanding that both sides had filed written submissions, for I had seen, from the record, written submissions by the appellant and by the respondent.
4. While preparing to write judgement, I have noted that the appellant did indeed file written submissions, dated 25th September 2024. However, the submissions that I thought were filed by the respondent, dated 9th April 2025, I have noted, were not meant to be filed in this appeal cause, but in Milimani HCCOMMISCAPP/E315/2025, where the parties are the same as in this file. Those submissions relate to an application in that cause, dated 25th March 2025, and not this appeal. Clearly, therefore, the said submissions were filed in the wrong file or cause.



5. Given that the matter has never been placed before a Judge for directions, no directions have even been given for canvassing the appeal by way of written submissions, and the respondent has not filed written submissions on the appeal, it would be unjust to determine the appeal based only on the written submissions by the appellant, without affording the respondent an opportunity to be heard.
6. Consequently, I shall return this file to, the relevant registry, the Civil Appeals Division, High Court, Milimani, with directions, to the Deputy Registrar, that this appeal file be placed before a Judge, with notice to the parties, in compliance with Order 42 rule 13(1) of the Civil Procedure Rules, for directions.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 21ST DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Oteyo, instructed by Sheth & Wathigo, Advocates for the appellant.

