



**Republic v Nyaga (Criminal Appeal E004 of 2023)
[2024] KEHC 1352 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E004 OF 2023
WM MUSYOKA, J
FEBRUARY 16, 2024**

BETWEEN

REPUBLIC APPELLANT

AND

SAMWEL NYAGA RESPONDENT

*(Appeal from acquittal by Hon. P Olenko, Senior Principal Magistrate,
SPM, in Busia CMCCRC No. 1265 of 2021, of 3rd May 2021)*

RULING

1. I am unable to process judgement in the appeal herein, for the record before me is incomplete.
2. It is discernible from the petition of appeal, undated, but filed herein on 13th January 2023, and the written submissions by the appellant, dated 29th November 2023, that the criminal case in Busia CMCCRC No. 1265 of 2021 proceeded, witnesses were presented and testified, and a ruling was delivered on a no case to answer, and that it is that ruling that provoked the instant appeal.
3. The trial court file was made available, but it is not complete. It only has the first page of the original handwritten record, the inside cover of the file, which only carries what happened when the matter came up for plea, on 16th April 2021. What happened between then, that is to say 16th April 2021, and 3rd May 2021, when the ruling was delivered, is missing.
4. The record of appeal, placed herein by the appellant, on an unknown date, is a reflection of the court file that is before me. It only has typed proceedings relating to 16th April 2021, when plea was taken, and 3rd May 2021, when the ruling on a no case to answer was delivered. There is no record of what transpired in between, more specifically the testimonies of the witnesses presented by the prosecution.
5. The appeal turns largely on the evidence that was presented at the trial, which the appellant argues was not properly evaluated by the trial court, for the purpose of determining whether or not a prima facie



case had been presented against the respondent. Without that material, I am handicapped, and I am unable to proceed.

6. As I cannot determine the appeal on an incomplete record, I do hereby direct the appellant to place on record a complete record of appeal, and the Deputy Registrar to cause a complete original trial record to be availed. The matter shall be mentioned on a date to be allocated at the delivery of this ruling.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 16TH DAY OF FEBRUARY, 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the appellant.

Mr. Okutta, instructed by Ouma Okutta & Associates, Advocates for the respondent.

