



REPUBLIC OF KENYA



KENYA LAW
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**Ndambuki & another v Mwanzia & another (Civil Appeal
E940 of 2022) [2024] KEHC 7488 (KLR) (Civ) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7488 (KLR)

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

CIVIL

CIVIL APPEAL E940 OF 2022

RC RUTTO, J

JUNE 19, 2024

BETWEEN

MWENDWA NDAMBUKI 1ST APPELLANT

MAXWELL AUTO TECHS LTD 2ND APPELLANT

AND

PETER MUTSYA MWANZIA & ANOTHER RESPONDENT

RULING

1. I have perused the court file and note that on 30th April 2024 the parties were directed to file and serve submission within 7 days, regrettably to date the appellants have not complied with this direction on the other hand the respondents have filed their submissions dated 3rd June 2024 effectively the appellant has have failed to prosecute this appeal.
2. I have also taken liberty to peruse the respondent's submissions and note that the respondents are opposing the appeal on among others grounds that the record of appeal is incomplete where, he states that there are no exhibits no 2, 3, and 8, no submission, no decree and Judgement of the trial court. I have perused the Record of Appeal and not that indeed the same is incomplete. The Record of Appeal does not include the decree and Judgment of the lower court from which the instant appeal emanate.
3. Order 42 Rule 13 of the *Civil Procedure Rules* makes provision on mandatory documents that must from part of the Record of Appeal and this includes the Judgement and decree. It has been around 1 year and 9 months since this appeal was filed and yet the appellant has not complied with the mandatory requirements.



4. I make reference to the case of *Chege Vs Suleiman* (1988) eKLR as well as the case of *Emmanuel Ngade Nyoka Vs Kibeka Mutisya Ngata* (2017) eKLR all which emphasize on the need to have a complete Record of Appeal.
5. In the Chege case the court held that an appeal was totally defective if it failed to have a decree. Guided by the above holding I proceed to find that this appeal is totally defective and proceed to strike it out with costs to the Respondents orders accordingly.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED ON 19TH THIS DAY OF JUNE 2024 AT NAIROBI.

Amutala: There was a decretal sum of Kshs 800,000 was deposited as security for the appeal, I apply that the same be released to the respondent pursuant to the orders of the court.

Court

The decretal amount of Kshs 800,000 being held by the court be released to the respondents.

RHODA RUTTO

JUDGE

