



Gitau & another v Gathige; Thigiti (Intended Interested Party) (Civil Appeal E331 of 2024) [2024] KEHC 10648 (KLR) (Civ) (13 September 2024) (Judgment)

Neutral citation: [2024] KEHC 10648 (KLR)

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

**CIVIL
CIVIL APPEAL E331 OF 2024**

RC RUTTO, J

SEPTEMBER 13, 2024

BETWEEN

FRANCIS NJAU GITAU 1ST APPELLANT

MARY WANJIRU NJAU 2ND APPELLANT

AND

SIMON NDUNGU GATHIGE RESPONDENT

AND

JOSEPH MWANGI THIGITI INTENDED INTERESTED PARTY

JUDGMENT

1. This is a court of record. As I was going through the record of appeal in preparation to write the judgment in this matter, I went back to the sequence of events dating back to when the plaint was first filed, that is on 12th February 2015. I went through the proceedings of the trial court, as contained from page 13 of the Record of Appeal dated 12th September 2023 and noted that the proceedings on record are those starting from 3rd September 2015.
2. I have also gone through the Supplementary Record of Appeal dated 30th May 2024 filed by the Counsel for the respondent. At page 9 of the record is a letter by the respondent counsel in which he states that judgment was entered on the 14th May 2015. Further, the decree contained at page 11 states that, the ex parte judgment was entered on the 17th April 2015.
3. This brief sequence of events shows that proceedings prior to 3rd September 2015 are missing and are not part of the record and there is a variance on the entry of the dates. The lower court's file attached to this Appeal is of no value since the said proceedings are not part of the record. Further, as evident



from the Memorandum of Appeal, the basis of the Appeal are events preceding 3rd September 2015, which proceedings are missing.

4. Therefore, given the foregoing it becomes unreasonable to proceed and prepare a judgment in this matter as it would occasion an injustice to parties. Consequently, I do direct that this matter be mentioned before the Deputy Registrar on 24th September 2024 for the Deputy Registrar to ensure that the complete Record of Appeal is prepared and served upon the parties within the next 30 days.
5. Thereafter, this matter be mentioned before the presiding Judge of the Civil division for further directions.

Orders accordingly.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 13TH DAY OF SEPTEMBER 2024.

For Appellants:

For Respondent:

Court Assistant: Peter Wabwire

