



**Kosgei v Okwara (Civil Appeal E013 of 2024)
[2024] KEHC 12700 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12700 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E013 OF 2024
RE ABURILI, J
OCTOBER 17, 2024**

BETWEEN

SAMMY KIPKORIR KOSGEI APPELLANT

AND

PAUL SIMAIGA OKWARA RESPONDENT

*(An appeal from the Judgment and Decree of Hon. R. M. Oanda, SPM
delivered on 25th January 2024 in Winam SPMCC No. E182 of 2022)*

RULING

1. On 6th June 2024, this court admitted the appeal herein to hearing and directed the Appellant to file and serve a Record of Appeal together with written submissions within 21 days thereof.
2. The directions were served on the Appellant’s counsel via email on 7th June 2024 at 4.23pm with a copy to the Respondent’s counsel. I then fixed the matter for 11th July 2024 to confirm compliance before the Deputy Registrar as I proceeded on leave.
3. On that latter date, the Appellant’s counsel never appeared. Only the Respondent’s counsel appeared.
4. There was no compliance by the Appellant. The matter was again fixed for mention on 22nd July 2024 to confirm if there would be service week Judges to handle those appeals that were ready for judgment writing. Still there was no compliance.
5. On 22nd August 2024 during the recess, as I was mentioning the files which were meant for service week which exercise had collapsed, again there was no compliance by the appellant. I fixed the matter for Judgment hoping that there would be compliance.
6. As I embarked on Judgment writing, I observed that there is no compliance with the Court’s directions such that no record of appeal or submissions have been filed and or served on the respondent.



7. An appeal can only be prosecuted if there is a record of appeal and submissions filed or the appeal argued orally. None of the above have been done yet the trial court record of proceedings, Judgment and all documents were availed to this Court on 31st May 2024. The appeal was filed on 5th February 2024.
8. In the absence of the record of appeal and submissions whether oral or in writing, this Court cannot write a judgment.
9. Accordingly, this appeal is hereby dismissed for want of compliance with directions of the court to file a record of appeal and submissions.
10. Each party to bear their own costs of the dismissed appeal.
11. The lower court file to be returned forthwith.
12. This file is closed. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 17TH DAY OF OCTOBER, 2024

R. E. ABURILI

JUDGE

