



Doyo v Advocates Complaints Commission & another (Civil Appeal 109 of 2020) [2023] KEHC 2129 (KLR) (17 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2129 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 109 OF 2020
F WANGARI, J
MARCH 17, 2023**

BETWEEN

MOHAMED OMAR DOYO APPELLANT

AND

ADVOCATES COMPLAINTS COMMISSION 1ST RESPONDENT

M/S OKANGA & COMPANY ADVOCATES 2ND RESPONDENT

(Being an appeal from the Judgement of the Senior Resident Magistrate Court at Mombasa Civil Suit No 917 of 2020 delivered on 27th April, 2020)

JUDGMENT

1. This is an appeal is not clear on what the appellant seeks to appeal against. At the heading of this judgment, I had to deduce from the proceedings filed by the appellant on what he intends to appeal against. The appellant who is acting in person through a letter addressed to the Deputy Registrar, Mombasa High Court dated September 8, 2020 and filed the same day expressing his lack of knowledge in legal matters and sought for court's assistance.
2. Through a Memorandum of Appeal dated August 12, 2020 and filed on September 13, 2023, the Appellant preferred twelve (12) grounds of appeal appealing against the judgment of the Advocates Complaints Commission in case No 917 of 2017. The appellant prayed that the order and the verdict of the commission be set aside and the appeal be allowed. However, from the Record of Appeal filed on November 11, 2020, the appellant referred to an appeal from the judgment by the Senior Resident Magistrate's Court at Mombasa in Civil Suit No 917 of 2020.
3. Upon perusal of the Record of Appeal, I must admit that it was quite difficult to peruse through it as it was a mix up of various document and pleadings from different cases, and to make the matters worse, the documents, the index was sketchy and the documents filed were not paginated. Nevertheless,



considering that the appellant acts in person and he had expressed his lack of knowledge in legal matters and procedures, I ensured that I have gone through each and every document filed.

4. From the Record of Appeal, there was no judgment from the Advocates Complaint Commission which as per the memorandum of Appeal, the appellant was appealing against. Further, the judgment in Mombasa Civil Suit No 917 of 2020 was not included to form part of the records. I had to peruse through the lower court file where in order to locate the judgment being referred to.
5. The parties herein appeared before Njoki Mwangi J for directions on the appeal. Directions were given that the appeal be canvassed by way of written submissions. Both parties filed their submissions. The submissions filed by the appellant gave a history of the failed advocate/client relationship between the appellant and the respondents. He prayed for 'general damages' for 'wrongful/unlawful representation' by the respondent.
6. The respondent on the other hand submitted that he was at a loss on what to submit as the appeal was centred on the decision of the Commission but not the judgment of the court. He prayed that the appeal be dismissed with costs as it lacked merits.
7. As the first appellate Court, it is now well settled that the role of this court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of *Selle & Ano v Associated Motor Boat Co Ltd (1968) EA 123*). This court nevertheless appreciates that an appellate court will not ordinarily interfere with findings of fact by the Trial Court unless they were based on no evidence at all, or on a misapprehension of it or the court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in *Mwanasokoni v Kenya Bus Service Ltd (1982-88) 1 KAR 278* and *Kiruga v Kiruga & Another (1988) KLR 348*.

Analysis and determination

8. The issue for determination is whether the appeal can still be determined based on the Record of Appeal filed. The Supreme Court in the case of *Law Society of Kenya v Centre for Human Rights and Democracy & 12 Others* (Sup Ct No 4 of 2014) it was held that:

“The Record of Appeal is the complete bundle of documentation, including the pleadings, submissions, and judgment from the lower court, without which the appellate court would not be able to determine the appeal before it.”
9. Again, the Court, in the case of *Bwana Mohamed Bwana v Silvano Buko Bonaya & 2 others [2015] eKLR* held in paragraph 41;

Without a record of appeal, a Court cannot determine the appeal cause before it. Thus, if the requisite bundle of documents is omitted, the appeal is incompetent and defective, for failing the requirements of the law. A Court cannot exercise its adjudicatory powers conferred by law, or the *Constitution*, where an appeal is incompetent. An incompetent appeal divests a Court of the jurisdiction to consider factual or legal controversies embodied in the relevant issues.”
10. With the incomplete Record of Appeal and a conflicting Memorandum of Appeal, it is impossible to determine this appeal before this court. Even if the court was to consider the judgment dated April 27, 2020, though not forming part of the Record of Appeal, this appeal was filed on April 13, 2020, which is way past the filing period of an appeal. There is nothing on record to show that the appellant was granted leave to file the appeal out of time. The appeal is therefore incompetent and defective. I therefore order as hereunder;
 - i. The appeal has no merits, an abuse of the court process and is hereby dismissed



ii. The 2nd respondent is awarded costs of the appeal

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 17TH DAY OF MARCH, 2023.

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F WANGARI

JUDGE

In the presence of;

Appellant present in person

N/A for Respondent

Guyo, Court Assistant

