



REPUBLIC OF KENYA



**Lugano v Zauko & another (Civil Appeal 14 of 2021)
[2023] KEHC 20416 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL 14 OF 2021
WM MUSYOKA, J
JULY 21, 2023
(FORMERLY KAKAMEGA HCCA NO. 116 OF 2019)**

BETWEEN

STEPHEN LUGANO APPELLANT

AND

NAOMI MIHADI ZAUKO 1ST RESPONDENT

HARRIS AGINGA ASILIGWA 2ND RESPONDENT

(Appeal from ruling and order of Hon. RM Ndombi, Resident Magistrate, RM, in Vihiga PM CSC No. 45 of 2015, of 24th October 2019)

RULING

1. I find a disconnect between the record of appeal and the original trial court record from which it is derived. That raises completeness, integrity and authenticity issues around the record of the trial court, and a decision cannot be made on it in the circumstances.
2. The appeal herein is on a determination that Hon Ndombi, RM, allegedly made on October 24, 2019. Whereas the record of appeal has the proceedings conducted before Hon Ndombi, RM, inclusive of the impugned ruling, the original trial court file does not have that record or proceedings. The original trial court file only runs up to 2nd August 2016, when the grant was confirmed by Hon JA Orwa, Principal Magistrate, PM. There is nothing in that record to suggest that other proceedings were taken after August 2, 2016. The last application to be filed in that original record, on July 8, 2016, is the summons for confirmation of grant, dated June 23, 2016, which Hon Orwa, PM, determined on August 2, 2019.



3. I hereby direct the Deputy Registrar to look into the matter, so that the original trial records are in tandem with the record of appeal, or otherwise to resolve the anomaly one way or other. The file to be returned to me, administratively, thereafter, for judgment-writing.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 21ST DAY OF JULY 2023

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Ms. Osewe, instructed by Owiti Otieno & Ragot, Advocates for the appellant.

Mr. Chanzu, instructed by ZK Yego Law Offices, Advocates for the respondents.

