



**Odhiambo v Njoka & another (Civil Appeal 73 of 2021)
[2023] KEHC 22174 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22174 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 73 OF 2021
F WANGARI, J
JULY 14, 2023**

BETWEEN

DANIEL ODHIAMBO APPELLANT

AND

ELIUS NJERU NJOKA 1ST RESPONDENT

JANE NJERI 2ND RESPONDENT

RULING

1. The appeal herein was admitted for hearing on 21st June 2022. The matter was slated for directions on 29th September 2021. The Record of Appeal was to be filed within 14 days from 21/6/2022. From the court record, there is no Record of Appeal filed.
2. The 1st respondent filed submissions that the appeal should be dismissed for want of prosecution. I note that no application has ever been fixed for hearing. There has been no substantive application filed.
3. Under Order 51 Rule 1 of the *Civil Procedure Rules*, applications ought to be made by notice of motion. The said provision provides as doth: -

‘All applications to the court shall be by motion and shall be heard in open court unless the court directs the hearing to be conducted in chambers or unless the rules expressly provide.’
4. Procedural rules are the backbone of justice, as was reiterated by Maraga, J in *Shashikant C. Patel v Oriental Commercial Bank* [2005] eKLR in which he held inter alia;

“...we should never lose sight of the fact that rules of procedure, though they may be followed are the handmaids of justice. They should not be given a pedantic interpretation which at the end of the day denies parties justice.”



This was similar to the position adopted by Muriithi, J in *Inland Beach Enterprises Ltd v Sammy Chege & 15 others* [2012] eKLR where he held, inter alia:

“...in my view, with the cardinal principle of procedure that rules are handmaids of justice not mistresses; the rules must serve the justice of the case as the court may determine in the circumstances of the proceedings.”

5. I therefore decline to dismiss the appeal without a substantive motion. In any case, the appeal was admitted less than one year ago. There has been no delay in prosecution.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 14TH DAY OF JULY 2023.

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F. WANGARI

JUDGE

In the presence of;

N/A for the Applicant

N/A for the Respondent

Abdullahi, Court Assistant

