



REPUBLIC OF KENYA



**Ogembo v Yongo (Civil Appeal E200 of 2023)  
[2024] KEHC 11889 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11889 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E200 OF 2023  
RE ABURILI, J  
OCTOBER 3, 2024**

**BETWEEN**

**ELIUD OKUNGU OGEMBO ..... APPELLANT**

**AND**

**CHRISTOPHER ONDIEK YONGO ..... RESPONDENT**

*((Being an Appeal from the Judgment of Hon. E. Obina, SPM in  
Kisumu CMCC No. E056 of 2022 rendered on 16th November, 2023))*

**RULING**

1. The application dated 27<sup>th</sup> September 2024 seeks to review and set aside the order of this court made on 29<sup>th</sup> August 2024 dismissing this appeal for want of filing of a record of appeal pursuant to Order 42 of the *Civil Procedure Rules* and as directed by this court on 30<sup>th</sup> May 2024.
2. The applicant has explained the reasons for failure to file the record of appeal and the absence of decree sought from the lower court on several occasions as per the annexed correspondence.
3. A decree is an important document on appeal but a party is not prohibited from filing a record of appeal as directed by the court and subsequently filing a decree.
4. This was not the case here. This court cannot be blamed for dismissing the appeal as it could not keep the file open without action; noting that it is almost one year since the appeal was filed on 28<sup>th</sup> November 2023.
5. I have heard Mr. Sala Advocate on the reasons for delay and inaction. The Respondent has not raised any issue. I exercise discretion and allow the application dated 27<sup>th</sup> September 2024.
6. The order dismissing the appeal herein is hereby reviewed and set aside and substituted with the order reinstating the appeal dismissed for consideration on merit.



7. The Appellant is directed to file and serve a record of appeal together with written submissions within 14 days of today.
8. The Respondent shall file and serve written submissions within 10 day of service.
9. The lower court record to be availed including a duly signed decree forthwith.
10. Mention on 31<sup>st</sup> October 2024 to fix a judgment date.
11. I make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024**

**R. E. ABURILI**

**JUDGE**

