



**Adsite Limited v Prosolar Company Limited & 2 others (Civil Appeal E953 of 2023) [2024] KEHC 14100 (KLR) (Civ) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14100 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E953 OF 2023**

**BK NJOROGE, J  
NOVEMBER 14, 2024**

**BETWEEN**

**ADSITE LIMITED ..... APPELLANT**

**AND**

**PROSOLAR COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**MARIAN OSMAN BARROW ..... 2<sup>ND</sup> RESPONDENT**

**AMINA MOHAMED AHMED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This Appeal was flagged down for the Rapid Results Initiative (RRI) during the month of September, 2024.
2. The Appellant’s advocates M/s Wachira Gachoka & Co. Advocates appeared before this Court on 24/09/2024. They confirmed having filed their written submissions to the instant Appeal. There was no appearance by the firm of A.A. Mundaya & Co Advocates.
3. The Court then retired to consider the submissions filed, noting that the Respondent’s Advocate was said not to have filed any submissions.
4. The Court has seen and perused the Appellant’s submissions dated 18<sup>th</sup> June, 2024. The Court notes that there are no submissions filed by the Respondent.
5. The Court has also noted that the original court file from the Lower Court has been availed. It however contains scanty documents. The documents contained therein are the Plaintiff dated 30/3/2023, the typed proceedings of the Trial Court and the impugned Ruling dated 14/9/2023.
6. The Trial Court file contains no pleadings filed by the Respondent.



7. The Record of Appeal has been filed by the Appellant.
8. Directions in this matter were issued on 29/8/2024 before the Hon. Lady Justice C. Meoli. One of the directions was that the Appellant files its Record of Appeal within 7 days.
9. Earlier on 7/2/2024 the Appellant's Counsel appeared in Court before Hon. E. Wambo the Deputy Registrar. Counsel indicated that he had not filed the Record of Appeal. On that date the Respondent's Advocate was absent.
10. The Appellant cannot be said to be unaware of their responsibility in preparing a Record of Appeal in the matter, filing the same in Court and serving the opposing Counsel. The directions of the Court were clear enough during the issuance of directions.
11. As matters stand, the Court has perused the online Case Tracking System (CTS). It can see the Appellant's written submissions dated 18/6/2024. It however cannot see any Record of Appeal.
12. Without this Record of Appeal and with the scanty documents in the original Trial Court file, the Court is unable to render a decision in this matter. An example is that the Court has no sight of the Agreement dated 3/12/2018. This is the agreement that is said to contain an arbitration clause.
13. The other issue that concerns the Court is that there is no proof that the Respondent has been served with the date of 24/9/2024. It is entirely possible that they are not aware of the proceedings taking place so far. The Court has not seen proof of service by way of an Affidavit of Service filed.
14. The essence of the Rapid Result Initiative (RRI) is to expedite hearings and unlog the matters pending in Court. The main essence is to dispose of the matters pending.
15. The Court will issue directions and orders that will ensure that the spirit of the Rapid Result Initiative is maintained. The Court notes that the original Court file for the Trial Court has proceedings which are typed and were certified on 27/8/2024.

### **Directions**

16. The Appellant is to prepare file and serve a Record of Appeal within 14 days from the date of this order.
17. The Respondent is to file and serve their written submissions within 14 days, from the date of being served with a Record of Appeal.
18. In the event that the Appellant fails to comply with the directions for filing the Record of Appeal within the time stated, the appeal shall stand dismissed automatically with no orders as to costs.
19. The matter to be mentioned before the Honourable Deputy Registrar on a date to be assigned on the Ruling date for parties to appear and confirm compliance.
20. If parties will have complied, the Honourable Deputy Registrar will place the matter for mention before this Court for assigning a date for highlighting or Judgment.
21. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024**

**NJOROGE BENJAMIN. K**

**JUDGE**

In the presence of: -



..... for the Appellant

.....for Respondents

Court Assistant.....

