



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CIVIL APPEAL NO. 22 OF 2018**

**FREDRICK ODONGO OTSIENO.....APPELLANT**

**VERSUS**

**AL HUSNAIN MOTORS LTD.....1<sup>ST</sup> RESPONDENT**

**KENNEDY KADAJI LUMWAJI.....2<sup>ND</sup> RESPONDENT**

*(Arising from the judgment of Ukwala SRMCC No. 1 of 2010 dated 20.7.2018 before Hon. G. Adhiambo – SRM)*

**RULING**

1. On 11.11.2019 the appellant Willis Advocate holding brief for Mr. Musomba Advocate was notified by the Court that the record of Appeal has no Memorandum of Appeal which is the primary document in an appeal, and counsel was directed to file and serve a supplementary record of appeal containing the said Memorandum of Appeal and in default, the appeal shall stand struck out.
2. The matter was slated for mention today to confirm compliance meaning the appellant had until today to file and serve a supplementary record of appeal containing a Memorandum of Appeal, which he has not done.
3. Failure to comply with directions of the court attracts consequences which include dismissal or striking out of pleadings.
4. The Appellant has since filing of this appeal in 2018 not moved the court on any single day. It is the court that has been acting *suo moto*. He appears not interested in the appeal and only wants to prevent the Respondent from enjoying the fruits of a lawfully obtained judgment. That being the case, I have no option but to proceed and order that this appeal be and is hereby dismissed for want of compliance with directions of the court to compile and file a complete record of appeal incorporating a memorandum of appeal which is a primary document in an appeal.
5. I make no orders as to costs.
6. Orders accordingly.

**Dated, Signed and Delivered at Siaya this 19<sup>th</sup> day of November 2019.**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Mr. Okello h/b for Mr. Musomba Adv. for the Appellant

N/A for the Respondent

CA: Brenda and Modestar