

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CIVIL APPEAL NO. 2 OF 2018

OWALA CHAMPINGNY MAKONYANGO.....APPELLANT

VERSUS

SIAYA WHOLESALERS LTD.....RESPONDENT

(From Original Siaya PMCC 68 of 2011 Ruling Delivered on the 14.12.2017 by Hon J. O. Ongondo – Principal Magistrate)

RULING

1. On 15.7.2019 this court in sustaining this appeal which was to be dismissed for want of a complete record of appeal directed the appellant to file and serve a complete record of appeal upon the Respondent within 15 days from the date of the Ruling, and fixed the date for directions on 17.9.2019. On the latter date, the Appellant's Counsel was not present and the Respondent's Counsel again sought for dismissal of the appeal for non-compliance with the Orders of 15.7.2019.
2. The court declined to dismiss the appeal and fixed this date for hearing and directed the Respondent's Counsel to serve the Appellant's counsel. The latter are represented today for hearing and again there is no evidence of compliance with the Orders of 15.7.2019.
3. That being the case, I have no option but to proceed and dismiss the appeal herein for non-compliance with orders on 15.7.2019 as there is no complete record of appeal upon which the appeal can be determined as stipulated in Order 42 of the Civil Procedure Rules.
4. The appellant shall pay costs of the appeal and of the application dated 20.5.2019, to the Respondent.

Dated, Signed and Delivered at Siaya this 20th day of November, 2019.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Ochanyo h/b for Mr. Ashioya Adv. for the Appellant

Miss Ndeda h/b for Mr. Ayosee for the Respondent

CA: Brenda and Modestar