



**Ngolo & another (Suing as the Administrator of the Estate of  
Rael Andego Esau (Deceased) v Mbaluku & another (Civil Appeal  
E035 of 2025) [2025] KEHC 14458 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14458 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E035 OF 2025  
A MABEYA, J  
OCTOBER 14, 2025**

**BETWEEN**

**DAN NDOLO NGOLO ..... 1<sup>ST</sup> APPELLANT  
AGGREY KUTAI NGOLO ..... 2<sup>ND</sup> APPELLANT  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF RAEL ANDEGO ESAU  
(DECEASED)**

**AND**

**CLINTON KYALO MBALUKU ..... 1<sup>ST</sup> RESPONDENT  
LEWIS MUSYOKA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. I have considered the representations by learned Counsels.
2. According to the Judiciary's timelines, appeals should be determined within 180 days from the date of admission. This appeal was admitted on 10/3/2025. It had to be determined by 10/9/2025.
3. It came up for directions on 8/4/2025 when none of the parties appeared. The Court issued a Notice To Show Cause for dismissal.
4. On 23/4/2025, the parties appeared and directions were given. The Record of Appeal was to be filed within 21 days and submissions exchanged for highlighting on 17/6/2025.
5. By 17/6/2025 the appellant had not filed the Record of Appeal. Ms. Mokaya learned Counsel for the Appellant gave an explanation whereby the Court granted the appellant 14 days to file and serve the Record of Appeal in default, the appeal to stand dismissed.
6. Once again the Record of Appeal was not filed and the appeal stood dismissed as at 28/6/2025.



7. On 14/7/2025, Ms. Mokaya once again implored the Court for more time. The Court resuscitated the appeal on condition that thrown away costs of Kshs.7,000/- were paid within 14 days failure of which the dismissal to stand.
8. The Court is being informed that no costs have been paid to date despite reminders by the respondent. The appellant feigns that it was an oversight.
9. Time and again it has been held that parties and their advocates are bound by court directions. That it is an overriding objective of the Civil Procedure Act that parties and their advocates cooperate with Courts for delivery of justice. See section 1A of the Civil Procedure Act.
10. Failure to file the Record of Appeal once may be an oversight, twice a happenstance but thrice, that amounts to outright disobedience and contemptuous of the Court.
11. This will not be permitted. The appeal stood dismissed as at 28/7/2025 when the appellant failed to obey the order of 14/7/2025.
12. Accordingly, there is nothing to submit on. The file is marked as closed.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 14<sup>TH</sup> DAY OF OCTOBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

