



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NUMBER E169 OF 2023

**COSMAS CHARANA OMBUI -----
APPELLANT**

-VERSUS-

**ROBERT NJOROGE KAMAU -----
RESPONDENT**

RULING

1. This Ruling follows the Respondent's Notice of Motion dated 6th December 2024 for orders as hereunder;-
 - a) **THAT the Record of Appeal herein be struck out and consequently the Appeal be dismissed.**
 - b) **THAT further and/or in alternative to prayer a) above, this Honourable court be pleased to issue any other orders/directions**

that it may deem fit in the circumstances of this case.

c) THAT costs of this Application and the Appeal be borne by the Appellant.

2. Through his Advocate (John Ndung'u Njuguna) the Respondent avers that the Record of Appeal filed is incomplete, missing the lower court's proceedings. The Appellant is said to have failed to comply despite indulgence by the Court, hence this Application.
3. The Appellant denies responsibility for the delay *vide* affidavit in reply. It is contended that a letter dated 11/5/2024 requesting for the proceedings was written to the court. A further letter dated 3/12/2024 addressed to the Deputy Registrar of this court was also dispatched for her intervention. This correspondence did not elicit a reply and so the Appellant states that the matter is beyond his control.
4. Only the Respondent filed submissions which I have perused against the evidence on the record. Indeed there have been many mentions of the matter for the purpose of filing of a Supplementary Record of Appeal containing

proceedings of the trial court. The court fixed a last mention for 9/12/2024 but still there was no compliance.

5. There is no doubt that proceedings or notes of the trial court are a critical component of a Record of Appeal without which the Appeal may not be properly determined.
6. As noted in the Respondent's Submissions, although an Appellant has a right to be heard, such right is not absolute but ought to be exercised diligently in the general interests of administration of justice (**See Case Law in Peterson Majau Mbae vs Antonisio Njue Njeru (2021) eKLR cited by Counsel**).
7. It would, however, appear that the Court is mainly to blame for the failure to include the proceedings in question in the Record of Appeal. The Appellant has shown the effort he made in an attempt to obtain the proceedings, to no avail. I am minded to grant him one more chance to file a Supplementary Record that includes the missing proceedings or notes of the trial court.
8. Consequently, this Application is dismissed with no order as to costs. The Appellant shall file and serve the Supplementary Record of Appeal incorporating the

missing proceedings by 11th February 2026 when the matter next comes up for mention, in default of which the Appeal shall automatically stand dismissed with costs to the Respondent.

9. Ruling accordingly.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 27th day of October, 2025. In the presence of:

Ms Mwira Advocate for Ms Nekesa Advocate for the Appellant

Ms Kurere Advocate for the Respondent

The Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.