



**Mwangi v Gichimu & another (Suing as the legal representatives
of the Estate of Jackson Gichimu Machia - Deceased) (Civil Appeal
E051 of 2023) [2025] KEHC 16428 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16428 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL E051 OF 2023
TW OUYA, J
NOVEMBER 13, 2025**

BETWEEN

DAVID MBUGUA MWANGI APPELLANT

AND

**TERESIA WAIRIMU GICHIMU & REGINA WACHEKE GICHIMU (SUING AS
THE LEGAL REPRESENTATIVES OF THE ESTATE OF JACKSON GICHIMU
MACHIA - DECEASED) RESPONDENT**

RULING

1. Through a Chamber Summons Application dated 28th October 2024 which is premised under Article 159(2)(b) of *akn ke act 2010 constitution the Constitution* of Kenya as read together with Section 3A of the *akn ke act 1924 3 Civil procedure Act* and Order 51 of the Civil Procedure Rules, the Respondent Applicant is seeking the following reliefs as against the Appellant Respondent:
 - i. That the Appeal filed herein be dismissed for want of prosecution.
 - ii. That the costs of this application be provided for.
2. The instant Application is supported on the grounds set out on its face and in the Affidavit of Teresia Wairimu Gicimu (the 1st Respondent Applicant herein) sworn on 28th October 2024. The 1st and 2nd Respondent Applicants herein lodged Civil Case No.143 of 2021 against the Appellant Respondent herein (then Defendant) before the Principal Magistrate's Court at Kandara vide a Plaint dated 29th June 2021 seeking general damages, special damages plus costs and interests thereon. The cause before the trial Court arose out of a fatal accident occurring on 27th December 2020 involving the Appellant Respondent's motor-vehicle registration number KBQ 944T (Toyota Matatu) and Motor Cycle registration number KMET 687Q which was being driven by Jackson Gichimu Machia (deceased and husband to the 1st and 2nd Respondents Applicants herein) along the Kandara-Thika



road at Kahanini area. The deceased suffered fatal injuries and died within 3 hours of the aforesaid accident.

3. The trial Court conducted a full trial culminating in its judgment delivered on 19th October 2022 wherein the Court found the deceased to have been 75% liable for the aforesaid accident with the Defendant's contribution towards the same accident adjudged at 25%. The trial Court awarded the deceased Ksh.100,000 being loss of expectation, Ksh.20,000 in respect of pain and suffering, Ksh.600,000 for loss of dependency, Ksh.51,410 for special damages total 871,410 less Ksh.100,000 plus 578,557 on account of 75% contributory negligence. The trial Court was awarded the deceased a global sum of Ksh.192,852 exclusive of interests, costs and additional Court fees where applicable.
4. The Appellant Respondent lodged before this Court on 19th July 2023 a Memorandum of Appeal dated 18th July 2023 against the trial Court's decision dated 19th October 2022.
5. In the subject Application, the Respondents Applicants urged the Court to dismiss the Appellant Respondent's appeal because a period of 1 year and 3 months has lapsed from the filing of the Memorandum of Appeal yet the Appellant Respondent has not taken any further steps to prosecute the same. It was further argued that the failure by Appellant Respondent to prosecute the appeal constitutes an abuse of the Court and is highly prejudicial to the Respondents Applicants.
6. When the instant Application came up for hearing on 23rd June 2025, counsel for the Appellant (Mr. Ngugi) affirmed being in receipt of the aforesaid application and prayed for time to, inter alia, file a Replying Affidavit. The Court granted the Respondent 21 days to put in "any response" to the Application before the Court.
7. It is evident that the Appellant's Memorandum of Appeal being dated 18th July 2023 and filed on 19th July 2023 was filed out of time as the trial Court's decision was rendered on 19th October 2022. Furthermore, at the hearing conducted on 23rd June 2025, Counsel for the Respondent Applicant (Ms. Msafiri) contended that the Appellant was allowed by the Court to lodge an appeal out of time on certain conditions which the Appellant then failed to fulfill. In response, counsel for the Appellant prayed for time to ascertain the content of the conditions issued by the Court.
8. It is noteworthy that about 4 months have lapsed since 23rd June 2025, and, no response to the subject Application has been filed by the Appellant Respondent.
9. Having set out the background to the instant Application, I find that identified the issue that compels itself for determination is whether the application is merited.
10. The significance of a record of appeal was underlined in the case of *Bwana Mohamed Bwana vs Silvano Buko Bonaya & 2 others* (20150 eKLR, where the Court declared as follows:

"Without a record of appeal a court cannot determine the appeal before it... A court cannot exercise its adjudicatory powers conferred by the law, or *akn ke act 2010 constitution the Constitution*, where an appeal is incompetent. An incompetent appeal divests a court of the jurisdiction to consider factual or legal controversies embodied in the relevant issues."
11. In circumstances where the record of appeal has been filed but is incomplete on account of non-compliance with the requirements of Order 42 Rule 13(4) of the Civil Procedure Rules, the Court is



enjoined not to entertain such an appeal. In *Abdala v Ewins* (Civil Appeal 87 of 2021) [2024] KEHC 133 (KLR) (19 January 2024) (Ruling), the Court held as hereunder:

“Duly guided, I find that with an incomplete record, the appeal is incompetent and defective. The court is thus divested of the jurisdiction to consider the issues before it, as the conditions set by law have not been met.”

12. In the subject proceedings, the Appellant Respondent has failed to lodge a record of appeal subsequent to filing a Memorandum of Appeal dated 18th July 2023 on 19th July 2023. Furthermore, no reasonable cause was provided by the Appellant Respondent for the failure to file a record of appeal as required by the law. As indicated hereinabove, despite the fact that the Court granted the Appellant Respondent the opportunity to respond to the subject cause, no response was mounted.
13. In the premises, the Court is persuaded that the instant application is merited. The same is hereby allowed as per the prayers numbered (i) and (ii) in the Chamber Summons Application dated 28th October 2024.
14. Being the successful party in the cause, the Respondent Applicant is granted the costs of the application.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 13TH DAY OF NOVEMBER, 2025.

HON. T. W. Ouya

JUDGE

