

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CIVIL APPEAL CASE NO. 02 OF 2019

PAUL KANJIITA KIOME.....APPELLANT

VERSUS

GACHIURU MWINJI MUGAMBI.....RESPONDENT

RULING

1. On **16th January, 2019**, this court issued the following orders:

- a) The Memorandum of Appeal to be served upon the intended respondent within 21 days of today.
- b) The intended appellant to file a record of Appeal within 30 days of today.
- c) All parties to come to court for directions on **3rd April, 2018**.

2. On **3rd April, 2019**, Miss Kithaka the intended appellant's advocate, asked the court to give the parties another date by which the intended appellant would have filed and exchanged the apposite record of appeal. The court issued the following orders:

- a) Appellant to file and exchange the record of appeal within 14 days of today.
- b) Directions on **8.5.2019**.

3. On **8th May, 2019**, Mr. Manasses Kariuki, the respondent's advocate told the court that the intended appellant had not served the respondent with the record of appeal contrary to the court's orders issued on **3rd April, 2018**. He decried that the intended appellant and his advocate were not in court to explain this disobedience of a court order. He asked the court to dismiss the intended appeal. I opine that this is a good ground to dismiss the intended appeal but I will explain the decision I have taken in this matter in paragraph 5 hereof.

4. I note that the intended appellant filed his record of Appeal on **3rd May, 2019** but has not served the respondent.

5. As the intended appeal has not been admitted, I am entitled to peruse the lower court's file and the decision made by the lower court in accordance with **Section 79B of the Civil Procedure Act**. I would then certify that there is sufficient ground or no sufficient ground for interfering with the decree, part of the decree or other orders appealed against. However, in the interest of justice, I will not do so. Therefore, the intended appellant is directed to serve the notice of appeal upon the intended respondent within 10 days of today, failing which the court may take appropriate measures.

6. It is so ordered.

Delivered in open court at Chuka this 15th day of May, 2019 in the presence of:

CA: Ndegwa

Kiogora Arithi for the Respondent

P. M. NJOROGE

JUDGE