

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NUMBER E160 OF 2024

JENIFFER WAMUCII WACHIRA.....APPELLANT

-VERSUS-

ALEXANDER KIRUGUMI NDUTA.....RESPONDENT
*(Being an appeal from judgment and decree in Small Claims Court at Thika
(Hon. A.Z. Ogange RM) claim number E1944 of 2023 dated 12-06-2024)*

RULING

When this matter came for mention on 11-09-2025 to confirm filing of submissions, I reserved the same for judgment today after ascertaining that both parties had filed their submissions. The appellant had filed her submissions dated 27-06-2025 while the respondent had filed his dated 28-07-2025. I am however unable to write the judgment for reasons given hereinbelow.

As I was going through the typed proceedings of the trial court as it was expected of me, I noticed that the names and testimonies of the witnesses was not in tandem with the statement of claim, the trial court's judgment and the submissions of the parties. This was despite the title of the proceedings showing the correct claim number and parties.

The above led me to resort to the lower court file just in case the appellant had filed proceedings of the wrong file. To my surprise, the handwritten proceedings in the lower court file, just as those in the record of appeal are not for the relevant claim. For instance, the proceedings show that Catherine Kiuma who testified as first witness was the claimant while the respondent was one

Rahab Nyokabi Njoroge. To make matters worse for me, both the handwritten and typed proceedings seem to be incomplete.

It is clear that things are not adding up. It is apparent that someone jumbled and mixed up the documents and proceedings of different files in the lower court. I have noted that the lower court file also has documents for a claim between Nelson Vudoti Nyamweya alias Nelson Nyamweya alias Nelson Nyamwea versus John Mwaura Wanyoike. This is a clear case of poor record keeping. I can only wonder where the proceedings for claim number E1944 of 2023 were filed just the same way one should be worried in which file are the proceedings in the claim filed by one Catherine Kiuma placed.

It is further interesting that none of the parties noticed the mix-up when they were preparing and prosecuting this matter. I would have struck out this appeal for being incompetent if the mistakes could purely be attributed to the appellant. However, since the appellant as a litigant may be innocent as much as I may be tempted to blame her advocate for not noticing the mix-up, I think the appropriate order to make here is that the proceedings of the lower court file should be retrieved and put in order. It is difficult to pinpoint a single person for the state of affairs.

In the circumstances, I make the following orders;

1. The trial court's file shall be returned to that court within seven days from today.
2. Upon receipt of the file, the Court Administrator and the head of station of the Chief Magistrate Thika Law Courts shall ensure that the correct proceedings for Small Claims Court claim number E1944 of 2023 are traced and retrieved within thirty days.

3. The lower court file with the traced correct proceedings shall be forwarded to the this court's registry and mentioned before the Deputy Registrar for purposes of ascertaining the correctness of the record of appeal vis a vis the lower court proceedings.
4. Thereafter, the matter shall be placed before the Presiding Judge of the station for further directions on the hearing of the appeal.

Dated signed and delivered at Nairobi this 27th day of **February** 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Karanja for the appellant and Miss Munyu for the respondent.