



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**CIVIL APPEAL NO. E 084 OF 2025**

**BENJAMIN INDUSWE.....**  
**APPELLANT**

**-VERSUS-**

**SHARON KENDI MUHATI.....**  
**RESPONDENT**

*(Being an appeal from the Ruling and Orders of the Chief Magistrate's Court at Nairobi Children's Court the Learned Hon. Jackie Kibosia (P.M) delivered on 2<sup>nd</sup> May 2025 in Children's Case No.MCCHCC/E1759/2024).*

**JUDGMENT**

**INTRODUCTION**

1. Vide Memorandum of Appeal dated 5<sup>th</sup> May 2025 the Appellant herein seeks the following orders-

1. THAT the appeal be allowed and the ruling and an order made on 2<sup>n</sup> May 2025 be set aside
2. THAT the respondent be compelled to refund the appellant the sum of Kshs 289,800
3. The respondent be condemned to pay costs of this appeal.

2. The applicant is aggrieved that in the impugned ruling, the Court allowed the Notice to Show Cause, notwithstanding that he had demonstrated that he had provided for a medical cover, and the respondent unilaterally opted to pay cash for the occupational therapist.

3. The application was canvassed via written submissions. The appellant's submissions are dated 5th February 2026, and he reiterates that, having taken out medical cover, the respondent was wrong to seek the same treatment on a cash basis; he is therefore entitled to a refund.
4. While considering the record of appeal, I found that the same is incomplete as it does not include proceedings after 23<sup>rd</sup> January 2025, and especially the proceedings related to the prosecution of the Notice to Show Cause.
5. In the case of **Bwana Mohamed Bwana v Silvano Buko Bonaya & 2 others [2015] eKLR** the Supreme Court, considering the incompleteness of a record of appeal, stated:  
  
**[41] Without a record of appeal a Court cannot determine the appeal cause before it. Thus, if the requisite bundle of documents is omitted, the appeal is incompetent and defective, for failing the requirements of the law. A Court cannot exercise its adjudicatory powers conferred by law, or 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.**
6. Accordingly, the appeal is struck out for being incomplete and therefore incompetent and defective.
7. On account of the relationship between the parties, there shall be no order as to costs.

It is so ordered

**DATED** and **DELIVERED VIRTUALLY** at **NAIROBI** this 6<sup>th</sup>  
March 2026.

**P.M. NYAUNDI**  
**JUDGE**

**In the presence of:**

Ng'alamoi Court Assistant

Ms. Nyagah holding brief for Kamau Muturi for Respondent

Jaoko for Appellant

ORIGINAL