

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLA NO. E011 OF 2025

JAMES OMARIBA NYAOGA T/A MONTE CARLO LOUNGE APPELLANT

VERSUS

JOHN PETER NYAATA RESPONDENT

RULING

1. This matter is scheduled for delivery of judgment today. However, upon retiring to write the judgment, and upon going through the record of appeal, I have realized that the motion that originated the suit before the Business Premises Rent Tribunal (BPRT) , that is the case Kisii BPRT No. E057 of 2024, is not in the record of appeal.
2. It is therefore impossible to tell exactly what it was that was disputed before the BPRT and thus not possible to write the judgment. In essence, the record of appeal is not complete, and without it being complete the court cannot proceed to write judgment in this matter. It is regretful that counsel for the respondent was also not diligent enough to note the missing originating motion and in fact affirmed that the record is complete, when in actual fact it is not.
3. I have no option but to re-open the appeal and it is hereby re-opened. I direct the appellant to file a supplementary record of appeal and ensure that the originating motion at the BPRT is filed.

DATED AND DELIVERED THIS 11 DAY OF MARCH 2026

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of :

Michael Oyuko – Court Assistant

M/s Theuri Wesonga & Co for the appellant – Absent

M/s Wesonga G.O & Co for the respondent - Absent