

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KAJIADO**  
**ELCLA E006 OF 2025**

MARIAS PAKINE TENKEYA..... APPELLANT  
VERSUS  
KEPHA NYAMONGO OENGA. .... RESPONDENT

**RULING**

*(On the fate of an incomplete record of appeal)*

**Introduction**

1. The Appeal before this court is against the Ruling of Hon. Kagoni E.M (SPM) delivered on 10<sup>th</sup> December, 2024 in Kajiado Chief Magistrate’s Court case CMCC No. E042 of 2020. In the impugned ruling, the learned Magistrate made a finding that the Appellant was liable for sentencing because he was in contempt of court orders. Consequently, the Appellant was directed to appear before the trial court for sentencing on 21st January, 2025.
2. Discontented with this Ruling, the Appellant lodged an appeal before this court vide the Memorandum of Appeal dated 28th January, 2025 praying that the Ruling be set aside on the basis that the learned Magistrate was not clothed with the requisite jurisdiction to try the matter *ab initio*. Based on the various grounds of appeal, the Appellant argues that the matter ought to have been filed before the Business Premises and Rent Tribunal for adjudication instead of the Chief Magistrate’s Court since it was a landlord-tenant dispute. Additionally, as at the time contempt orders were issued, the

tenancy had already lapsed; the lease having expired on 30th June, 2023 and the tenant removed from the house on 2nd July, 2023.

3. The Appellant in her submissions beseeches the court to find that the trial court entertained the matter which was outside its scope of authority since the dispute arose from a controlled tenancy within the meaning of section 2 of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act, Cap 301 of the Laws of Kenya.
4. When the matter came up for mention on 12th November, 2025, Mr. **Kansime Gideon**, learned counsel for the Appellant informed the Court that he had filed the record of Appeal and the appeal was therefore ready for hearing. Indeed, it is correct that the record of appeal was filed on 5th August, 2025 as per the court's CTS record. However, the record as filed is not complete because it only contains the typed proceedings of the trial court. It is insufficient for purposes of rendering a decision on the appeal before the court.
5. The lack of a complete record of appeal renders the appeal incompetent and defective.
6. The Supreme Court of Kenya in the case of *Bwana -vs- Bonaya & 2 others [2015] KESC 8 (KLR)* pronounced itself on the issue as follows;

*“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.”*

7. Order 42 of the Civil Procedure Rules is clear on what should be contained in the record of appeal. The Practice Directions of this court issued by the Hon. Chief Justice on 21<sup>st</sup> March, 2025 in the quest for standardizing practice and procedures in the Environment and Land Court, at Direction 14 further categorically stipulate what must be contained in the record of appeal as hereunder;

- i. Index page;
- ii. Memorandum of appeal;
- iii. Copies of pleadings;
- iv. Certified typed proceedings of the trial court;
- v. Certified copy of the judgment or ruling appealed against;
- vi. Certified copy of the decree or order of the court appealed against;
- vii. Copy of the order granting leave to appeal, if any;
- viii. List of witnesses filed by the parties at the trial court;
- ix. Witness statement(s) filed by the parties at the trial court;
- x. List and bundle of documents filed by the parties at the trial court;

8. The deficiency in the record of appeal is however curable. To enable a determination on the merits, this court in compliance with the dictates of Article 159(2)(d) of the Constitution; to administer justice without undue regard to procedural technicalities, will rise to its higher calling to do justice by allowing the Appellant a second chance to put her house in order and

forthwith file a complete record of appeal as outlined in the Practice Directions on Standardization of Practice and Procedures in the Environment and Land Court, 2025.

9. Consequently, the judgment scheduled for delivery today will be temporarily arrested, awaiting compliance with the above directions.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 24<sup>th</sup> Day of March 2026**

**M.D. MWANGI  
JUDGE**

**In the virtual presence of:**

Mr. Kansime Gideon for the Appellant

N/A by the Respondent

Court Assistant: Mercy

**M.D. MWANGI  
JUDGE**