



REPUBLIC OF KENYA



KENYA LAW
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**Bundotich v Rotich (Environment and Land Appeal E003 of 2024)
[2025] KEELC 926 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 926 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND APPEAL E003 OF 2024**

L WAITHAKA, J

FEBRUARY 26, 2025

BETWEEN

PATRICK BUNDOTICH APPELLANT

AND

IRENE JELEGAT ROTICH RESPONDENT

RULING

1. Through the notice of motion application dated 10th February 2025, the applicant seeks leave to file a Supplementary Record of Appeal to include the decree from the subordinate court; that this court does issue an order directing the subordinate court to extract the decree to enable the appellant file the same in court; that costs to be provided for.
2. The application is rooted on the grounds on its face and the supporting affidavit of Tarigo Kiptoo, Counsel for the appellant, sworn on 10th February, 2025. He deposes that the appellant has filed an appeal against the judgment of the trial court delivered on 25th January 2024; that at the time of compiling the record of appeal, he had not extracted the decree; that owing to the statutory and court time lines regarding filing of appeals, the appellant filed the instant appeal without including the said decree and prays that the orders sought be granted. He also deposes that the respondent will not suffer any prejudice if the application is allowed.
3. The application is not opposed.
4. A record of appeal is not complete without a decree. The omission of a decree or order when filing an appeal is remedied by Order 42 Rule 2 of the Civil Procedure Rules which provides:

“Where no certified copy of the decree or order appealed against is filed with the memorandum of appeal, the appellant shall file such certified copy as soon as possible and in any event within such time as the court may order (emphasis own), and the court need



not consider whether to reject the appeal summarily under section 79B of the Act until such certified copy is filed.”

5. In the case before the court, the record of appeal is incomplete as no decree has been attached as part of the record. It is the responsibility of the appellant to extract the decree from the subordinate court and not for this court to direct the trial court to extract the decree. In that regard, see the case of Prime Bank Company v Joseph Mwangi Ndegwa (2019) eKLR where the court stated:

“Based on the above cited authorities the Appellant indeed has the onus to extract the decree to make the record complete. However, the Respondent also has the onus of making that decree available for extraction by the Appellant by paying the requisite filing fees at the lower court.”

6. To ensure a complete record of appeal is placed before the court before directions are given, I allow prayer (a) in the application dated 10th February 2025, and direct the appellant to file a supplementary record of Appeal in 21 days.
7. The Deputy Registrar is directed to release the file to the trial court to enable the appellant extract the decree.
8. As the application is not opposed, no orders on costs are made.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KABARNET THIS 26TH DAY OF FEBRUARY, 2025.

L. N. WAITHAKA

JUDGE

Ruling delivered virtually in the presence of;-

Ms. Kanda holding brief for Mr. Tarigo for the appellant /applicant

Mr. Sirma holding brief for Mr. Kipkenei for the respondent

Court Asst.: Ian.

