



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kaduyu & another v Darford Industries Limited (Civil Appeal E067 & E069 of 2022  
(Consolidated)) [2025] KEELRC 54 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 54 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CIVIL APPEAL E067 & E069 OF 2022 (CONSOLIDATED)**

**L NDOLO, J  
JANUARY 23, 2025**

**BETWEEN**

**AARON MUGESAN KADUYU ..... 1<sup>ST</sup> APPELLANT**

**SILAH KHAMASI AMOKOLA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**DARFORD INDUSTRIES LIMITED ..... RESPONDENT**

**RULING**

1. This ruling determines the Respondent's objection raised by Notice of Motion dated 2<sup>nd</sup> September 2024, seeking that the Memorandum of Appeal herein as consolidated with ELRCA No. 69 of 2022 be struck out.
2. The Motion is supported by an affidavit sworn by the Respondent's Counsel, Jamuel Mwakandana Kiwinda and is based on the following grounds:
  - a. That the Appellant's delay in lodging a complete and proper Record of Appeal will prejudice the fair determination of this matter;
  - b. That the Appellant's failure to fix the appeal for directions is an abuse of the court process;
  - c. That the Appellant's failure to file and serve all the requisite documents relied upon by the parties before the lower court is an abuse of this court's process;
  - d. That it is in the interest of justice that the orders sought are granted.
3. In his affidavit in support of the Motion, Counsel for the Respondent, Jamuel Mwakandana, Kiwinda depones that the Appellant filed an incomplete Record of Appeal dated 7<sup>th</sup> July 2022, which did not contain any of the Respondent's exhibits relied on before the trial court.



4. Counsel points out that the index in the said Record of Appeal indicates that the Respondent's exhibits are contained at page 205 in the Record, whereas the entire document has only 204 pages.
5. Counsel further depones that after filing of the incomplete Record of Appeal, the Appellant failed to take any steps to prosecute the appeal prompting the Court to list it for notice to show cause on 28<sup>th</sup> September 2023.
6. The Appellant did not appear on the said date and the Court fixed the matter for mention on 16<sup>th</sup> October 2023. On this date, the Respondent stated that it had not been served with a complete Record of Appeal and the Court directed the Appellant to comply within 7 days.
7. Counsel goes on to depone that by 31<sup>st</sup> January 2024 when the parties appeared before the Court, the Appellant had not complied with the directions issued on 16<sup>th</sup> October 2023. On the same day, the Appellant served the Respondent with the original Record of Appeal dated 10<sup>th</sup> June 2022 and a Supplementary Record of Appeal with no attachments.
8. Counsel asserts that despite being given numerous chances, the Appellant is yet to file a proper Record of Appeal. He points out that on 24<sup>th</sup> June 2024, the Appellant served yet another incomplete Record of Appeal, omitting crucial documents relied upon by the trial court.
9. Counsel accuses the Appellant of attempting to steal a match from the Respondent by omitting critical documents that informed the reasoning of the trial court. He singles out an attendance register/muster roll produced before the trial court to show the number of days the Appellant had worked, which is said to have been omitted from the Record of Appeal.
10. The Appellants' response is contained in a replying affidavit sworn by the 1<sup>st</sup> Appellant, Aaron Mugesan Kaduyu on 17<sup>th</sup> December 2024.
11. Kaduyu depones that a consolidated Record of Appeal consisting of 207 pages was filed on 6<sup>th</sup> July 2023. Thereafter, the Appellants filed their submissions on 17<sup>th</sup> February 2024.
12. Kaduyu terms the Respondent's objection as a delaying tactic and insists that the Record of Appeal is complete.
13. I have carefully considered the Respondent's objection and the Appellants' response. While the Record of Appeal filed by the Appellants may not be in compliance with the required format, I am satisfied that striking out the appeal on this ground would be a travesty of justice.
14. In the circumstances, I direct the Appellants to prepare a fresh comprehensive Record of Appeal which they will forward to the Respondent's Counsel for concurrence on completeness before filing in court within the next twenty-one (21) days from the date of this ruling.
15. Failure to comply with these directions will lead to an automatic striking out of the appeal, without any further orders from the Court.
16. Each party will bear their own costs.
17. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2025**

**LINNET NDOLO**

**JUDGE**

**Appearance:**



Mr. Ngigi for the Appellant

Mr. Kiwinda for the Respondent

