



**Nduba v Wanza (Environment and Land Appeal E012 of 2021)
[2024] KEELC 5433 (KLR) (18 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5433 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E012 OF 2021**

OA ANGOTE, J

JULY 18, 2024

BETWEEN

AGNES MBITHE NDUBA APPELLANT

AND

NORAH WANZA RESPONDENT

(Being an Appeal from the Judgement of Hon. K.I Orange, Senior Resident Magistrate in Nairobi, Civil Suit No. 4260 of 2015 delivered on 30th April 2020)

JUDGMENT

1. Before the Court for determination is an Appeal dated 26th February 2021. The Appellant is seeking for the following orders:
 - a. That the appeal be allowed.
 - b. That the entire judgement of the lower court of 30th April 2020 be set aside and the Court does enter judgement in favour of the Appellant.
 - c. Such other and/or further relief as this Honourable Court may deem just to grant.
 - d. That the costs of this appeal and those in the lower court be awarded to the Appellant.
2. Order 42 Rule 13 (4) of the *Civil Procedure Rules* provides as follows:

“Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say-

- (a) the memorandum of appeal;
- (b) the pleadings;



- (c) the notes of the trial magistrate made at the hearing;
- (d) the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
- (e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate;
- (f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal:

Provided that-

- (i) a translation into English shall be provided of any document not in that language;
- (ii) the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).”

3. As per this Court’s record, Mr. Muli, advocate for the Appellant stated on 30th May 2023 that he had filed the record of appeal. However, a perusal of the documents filed in this case in the e-filing portal reveals that the Appellant’s advocate only filed a table of contents for the record of appeal on 27th August, 2022 but did not file any substantive record of appeal.
4. On 13th February, Mr.Okao, advocate for the Respondent, noted that the record of appeal was not complete. Mr. Muli advocate informed the court that he would re-serve the record of appeal. The Court ordered the record of appeal to be re-served. The parties were ordered to exchange submissions.
5. As of 9th July 2024, the Appellant had neither filed on the e -filing portal a complete record of appeal. The documents that are set out in Order 42 Rule 13(4) of the *Civil Procedure Rules* above are not on the e-filing system and are therefore deemed not to be on the Court’s record.
6. The appeal was to be heard by way of written submissions. However, in view of the foregoing, the Court cannot consider the submissions filed by both parties because the mandatory pleadings and documents required to guide the Court in reaching a fair and just determination are not on record.
7. In the case of Grace Njeri Theuri vs John Mburu Wainaina [2022] eKLR, the court held as follows:

“It is important to point out that under Order 42 Rule 13 (4) of the *Civil Procedure Rules*, the judge shall not allow a matter to proceed for hearing unless the record of appeal is duly filed.”
8. In the absence of a complete record of appeal, the appeal is hereby struck out with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18TH DAY OF JULY, 2024.

O. A. ANGOTE

JUDGE

In the presence of

Mr. Okao for Respondent

No appearance for Appellant

Court Assistant: Tracy

