



**Maiyebei v Chesebe (Environment and Land Appeal E022 of 2023)  
[2025] KEELC 3107 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3107 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND APPEAL E022 OF 2023  
EC CHERONO, J  
MARCH 27, 2025**

**BETWEEN**

**FRANCIS KINEI MAIYEBEI ..... APPELLANT**

**AND**

**FRED KAPONDI CHESEBE ..... RESPONDENT**

**RULING**

1. Vide a Notice of Motion application dated 25<sup>th</sup> November 2024, the Applicant/Respondent seeks the following orders;
  - a. (Spent)
  - b. That the original file in Sirisia SPMCC ELC case No. 17 of 2021 be returned to Sirisia Court for purposes of assessment of the Respondent's Bill of costs.
  - c. Costs.
2. The application is based on grounds apparent on the face of the said application supported by the affidavit of Omundi Bw'onchiri Advocate and a supplementary affidavit sworn by the Applicant/Respondent. According to Counsel for the Applicant, Judgment was entered in Sirisia SPM-ELC No. 17 of 2021 all in favour of the Applicant with costs and when this appeal was lodged, the original court file was forwarded to this Hon Court before the Respondent's Bill of costs dated 3/11/2023 was assessed and certificate of costs issued. The learned Counsel stated that the issue of assessment of costs has come up before the trial Magistrate severally but could not proceed in the absence of the original court file. He stated that the said Bill of costs has again been fixed for assessment of costs on 22/01/2025 and that no prejudice will be caused to the Respondent if the application is allowed.
3. The Supplementary affidavit by the Applicant reiterates the averments by his Advocate adding that the certificate of costs is an essential ingredient in the record of appeal and that the record as it is now is



- incomplete. He stated that this application is geared towards slowing the disposal of the appeal since the record of appeal is incomplete without the certificate of costs and other essential documents.
4. The Appellant filed grounds of opposition in response to the application dated 13/12/2024 in which he averred that the application has no merit and geared towards delaying the hearing of the appeal. The Appellant contends that the Applicant is only interested in executing the judgment and decree of the trial court before his appeal is heard and determined.
  5. I have considered the application, the supporting affidavit evidence, the supplementary affidavit, grounds of opposition, the submissions by the parties and the applicable law. The application under consideration is brought under section 3 & 3A of the Civil Procedure Act which is the Court's inherent powers to have the trial court file send back for taxation. The practice is that when a Memorandum of appeal is lodged by a party to the ELC registry, the Deputy Registrar ordinary requests the Executive Officer of the respective trial court station to forward the original file for directions and placing the same before the Judge for admission and further orders. The subject file from Sirisia law courts being PM-ELC NO.E017 of 2021 was placed before me for admission on 10<sup>th</sup> July, 2024. There is no power given to this court to return back the file for any other orders or directions. Once an appeal has been lodged, the Appellant is required to compile, file and serve his record of appeal. When this matter came up for directions on 16/10/2024, Counsel for the Appellant informed the court that he had filed and served the record of appeal and confirmed by counsel for the Respondent/Applicant who requested for time to go through the record of appeal. By consent of the parties, the matter was fixed for mention for directions on 16/11/2024 when Counsel for the Applicant informed the court that he had gone through the record of appeal and that the same was incomplete and needed time to talk to his colleague. That application was allowed and the matter was fixed for mention for further directions on 23/01/2025. When the matter was called out on the said date, Counsel for the Applicant informed this court that he had filed the present application which he sought for direction.
  6. As I stated hereinabove, this court has no powers to return a file which has been forwarded for purposes of appeal back to the trial court until the appeal is heard and determined. This court has an obligation to hear and determine an appeal within one year. This appeal was admitted on 10<sup>th</sup> July, 2024 and is unlikely to be heard and determined by 10/7/2025 which will be twelve months. The Applicant has stated that a certificate of taxation is an essential ingredient in a record of appeal. If that is what Counsel for the Applicant meant on 19/11/2024, then this application is misconceived and made in bad faith. The Taxing officer in the Bill pending before the Sirisia Law Court has not stated that she would not proceed with assessment of costs without the original court file. In any case, assessment of costs can be done through a Miscellaneous court file and not necessarily the original court file.
  7. In view of the matters aforesaid, I find the Notice of Motion application dated 25/11/2025 lacking in merit and the same is hereby dismissed with costs to the Appellant.
  8. Orders accordingly.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of;

1. Mr. Angima H/B for Bwonchiri for the Applicant.
2. Respondent/Advocate-absent.
3. Bett C/A.

