

**Juma (Suing as the administrator of the Estate of Lewis Eshialale Mukhonja - Deceased) v KCB Bank Limited (Civil Appeal E010 of 2022) [2023] KEHC 3765 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3765 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA**

**CIVIL APPEAL E010 OF 2022**

**WM MUSYOKA, J**

**APRIL 28, 2023**

**BETWEEN**

**WINNIE ODHIAMBO JUMA (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF LEWIS ESHIALALE MUKHONJA - DECEASED) ..... APPELLANT**

**AND**

**KCB BANK LIMITED ..... RESPONDENT**

*(Appeal from judgment and decree by Hon. MM Gituma, Resident  
Magistrate, RM, in Vihiga PMCCC No. 111 of 2018, of 27th April 2022)*

**RULING**

1. Order 42 of the Civil Procedure Rules requires that the original trial record be made available, before the appeal is considered by the Judge. That requires that the original trial court file be made available. The practice of filing a record of appeal is borrowed from the Court of Appeal, yet the mandate of the High Court, as an appellate court, is broader.
2. The reason for requiring the availing of the original trial record lies in Article 165(6)(7) of *the Constitution*. The High Court exercises a supervisory jurisdiction over subordinate courts, and has a duty to look at the records of proceedings conducted by the subordinate courts. It should not be just about the appeal, and the issues raised in it, it is also about auditing the proceedings for correctness, regularity and propriety.
3. The jurisdiction to supervise is exercisable through appeal, revision, Judicial Review or constitutional petition. The High Court even has mandate to suo moto, in the absence of any form of proceedings being initiated before it, to just call for the records to be placed before it. The objective is to ensure fair administration of justice; or, simply put, to satisfy itself that the subordinate court is doing or did the right thing, and that cannot be done properly and effectively without the original records.
4. In this appeal, the original trial court records have not been made available. So, Order 42 has not been complied with, and this court would not be able to exercise its constitutional mandate to supervise the



subject subordinate court, by examining the original records of its proceedings as required by Article 165(6)(7) of *the Constitution*.

5. Let the Deputy Registrar bring the matter into compliance with Order 42 and Article 165(6)(7) before the file is placed before the Judge for writing the judgment due. The matter to be handled hereafter at the High Court of Kenya at Vihiga.

**RULING IS DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS  
28TH DAY OF APRIL 2023**

**W MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Appearances**

**Mr. Anyumba, instructed by Anyumba & Associates, Advocates for the appellant.**

**Mr. Wangoda, instructed by LG Menezes & Company, Advocates for the respondent.**

