

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL NO. 75 OF 2011

EQUITY BANK LIMITED.....1ST APPELLANT/APPLICANT

JOSEPH MURIUKI T/A JOWARD ENTERPRISES...2ND APPELLANT/APPLICANT

JIBS ENTERPRISES.....3RD APPLICANT/APPELLANT

VERSUS

PERPETUA MUTHONI NDUMA.....RESPONDENT

RULING

On 29th July, 2016, the appellants' appeal was struck out primarily on the ground that a certified copy of the decree was omitted from the record of appeal. The applicants, by their motion dated 19th August, 2016, say that this was an error apparent on the face of the record for the copy of the decree was always on the record only that it was at a different page from that which the appellant had earlier indicated to the court.

If the applicants' deposition is true, then I agree with their counsel that indeed the court made an error to strike out their appeal for lack of the decree appealed against. Curiously, however, counsel for the respondent, while opposing the application, submitted that the decree was also not in the copy of the record of appeal that he was served with.

According to the applicants, the decree was at page 54 of the record and not page 47 as earlier indicated. Indeed, when checked the record I found a copy at page 54 thereof.

I am prepared to give the appellants the benefit of doubt and accept that it may be that the certified copy of the decree was always in the record of appeal filed in court only that I was not keen enough to see it before I struck out the appeal; and perhaps, it was also inadvertently omitted from the record that was served upon the respondent's counsel.

But even if I have to make all these concessions, there is one more thing which casts doubt on the validity of the decree itself; it appears that it was not paid for because there is no evidence that there was payment of further court fees considering that part of the claim which the lower court sustained was a liquidated sum. Again, I may not take it on the applicant for failure to pay the further court fees because I do not have any evidence that the executive officer assessed properly or at all the correct amount payable as further court fees.

In the circumstances, I will allow the applicants' motion dated 19th August, 2016 but on condition that they pay further court fees within fourteen days of the date hereof and in default, the motion shall stand dismissed. The costs shall be in the cause.

Dated, signed and delivered in open court this 22nd September, 2017.

Ngaah Jairus

JUDGE