



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Civil Appeal 120 of 2006

STEPHEN MACHARIA MUNYIRI.....APPELLANT

VERSUS

SALOME WAIRIMU MUNYIRI..... RESPONDENT

(An Appeal from the Judgment of MR. ITHUKU – SRM sitting at KERUGOYA in Civil Suit No. 236 OF 2004 delivered on 23/2/2005).

RULING

The Appellant is appealing against the Judgment of Mr. Ithuku – SRM Kerugoya in Succession Cause No.236 of 2004 where both the Appellant and Respondent were petitioners. Besides the original Record of Appeal the Appellant applied for and was granted leave to file a supplementary record of appeal. The said supplementary record is not before me.

The Counsels filed written submissions which I have well considered. Mr. Munene Muriuki has raised an issue of failure to include a decree in the Record of Appeal. I think it would be wise to deal with that issue first.

As I have indicated there is no supplementary record filed to even include the leave granted for the Appeal to be filed out of time. Secondly there is no ‘decree’ of the lower court filed herein. The Appellant had all the time to do so but he did not.

Order 42 rule 2 Civil Procedure Rules provides;

“Where no certified copy of the decree or order appealed against is filed with the Memorandum of Appeal, the Appellant shall file such certified copy as soon as possible in any event within such time as the Court may order and the Court need not consider whether to reject the appeal summarily under section 79B of the Act until such certified copy is filed.”

In the case of **JOSEPH NDERITU GITHINJI –VS- ESTHER WANJIRU GITHINJI C.A. NO.47 OF 1998 [1998] LLR 700** it was held;

“In the Court of Appeal no appeal can be lodged without a decree, as is also the case in the High Court as the decree or order is the primary document giving the Court jurisdiction to hear appeals”

From the above holding and the provisions of Order 42 rule 2(1) Civil Procedure rules it is clear that a decree must be filed in the record of appeal. However this being an old appeal I would not wish to strike it out on that ground alone. The Appellant is given 45 days within which to prepare a supplementary record, file and serve it. The parties to thereafter move the Court for purposes of taking a date for Judgment.

DATED, SIGNED AND DELIVERED AT EMBU THIS 6TH DAY OF JUNE 2012.

**H.I. ONG'UDI
JUDGE**

In the presence of;

Mr. Muraguri for Magee for Appellants

Njue – C/c