



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO.192 OF 2005

DAVID NDUNGU NGO THO.....1ST APPELLANT

NACOM AGENCIED.....2ND APPELLANT

HARDWARE INVESTMENTS.....3RD APPELLANT

GIDEON MWANIA KITUI.....4TH APPELLANT

VERSUS

WINNIE KARIUKI.....RESPONDENT

RULING

The judgment in this appeal was delivered on 6th November, 2009 and a draft decree (referred to as order) forwarded to counsel for the appellant on 4th March, 2010 for approval, amendment or rejection pursuant to **Order XX rule 7** of the revoked **Civil Procedure Rules**.

Counsel for the appellant made several amendments to the “order” and returned the same to the respondent’s counsel. In a subsequent decree submitted to counsel for the appellant, an attempt was made to incorporate the proposals of counsel for the appellant. That attempt did not fully take the proposals into account hence this reference in terms of **Order XX rule 7(4)** aforesaid. It is the contention of counsel for appellant that the decree drafted by counsel for the respondent is incompetent as it does not comply with the requirements of **Order XX rule 6(1)**.

While acknowledging the disparity between the decree and requirements of the **Order XX rule 6**, counsel for the respondent has submitted that the procedure adopted by counsel for the appellant to have this matter placed before a judge was not necessary. Counsel in his submissions made a further proposal on the decree, which has also been criticized by counsel for the appellant as still incompetent.

It must be clear from the foregoing that considerable time has been expended on this minor issue, taking nearly two years since the judgment was delivered. It is not clear to me why counsel for the respondent would wish to further delay the coming into force and payment of the new rents.

It is a basic learning that the decree must always agree with the judgment and what it (decree) must contain are enumerated under **Order 20 rule 6**. See also **Order XLI rule 28** and Appendix F Form No.8. **Rule 7(4)** provides that in case of any disagreement, any party may file a draft decree marked as for settlement and the matter be listed before the judge who heard the case. My understanding of the provision is that the judge’s role is to consider the draft decree marked as for settlement and if satisfied

that it conforms to the judgment to approve it.

The decree marked as for settlement annexed by the letter dated 22nd April, 2010 addressed to the Deputy Registrar by learned counsel for appellant, in my view is drawn in accordance with the terms of **Orders 20 and 41 rule 28**. It is also in agreement with the judgment of 6th November, 2009. It is approved.

To avoid further delay in this matter, the Deputy Registrar is directed to sign and seal a decree drawn in the same terms as the draft decree for settlement.

Orders accordingly.

Dated, Signed at Delivered at Nakuru this 7th day of October, 2011.

**W. OUKO
JUDGE**