



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

Civil Appeal 37 of 2005

**ALOISE MURIUNGIAPPELLANT
VERSUS
CORPORAL KINOTIRESPONDENT**

***(Being an appeal against the judgment in Meru Civil Suit No. 173 of 1992
dated 17/2/2006 delivered by M.S.G. Khadambi (SRM))***

JUDGMENT

The appellant in the lower court sued the respondent for Kshs. 7,596/=. As can be seen from the title of this appeal, the respondent is a corporal in the police force. He is said to be an administration police. The appellant alleged that the respondent took his said money which was the proceed of the sale of his *miraa*. He had leased the farm where that *miraa* came from. The respondent's case was that he was sent to the appellant's farm by the D.O. to stand over the plucking and the selling of the *miraa* because there was a dispute over the same. The proceed of sale of that *miraa* being Kshs. 7,596/= was handed to him and he in turn took it to the local chief. He therefore stated that he did not retain the money and that he was wrongly sued. He was not cross examined on his testimony in that regard. The chief gave evidence before the lower court to the effect that the money Kshs. 7,596/= was given to him and when the lower court case was filed against the respondent he deposited that money in court. He too was not cross examined on that aspect of his evidence. The lower court was in my view right to have accepted that what those two witnesses stated before court in regard to that money was the correct position. The court dismissed the appellant's case with costs to the respondent. The court ordered the money deposited in court be released to the appellant. In my view, the appellant's appeal has no merit. He was however aggrieved by the judgment of the lower court and he thereby filed this appeal. The respondent submitted that the appeal was incompetent due to the non conformity to order XLI Rule 8B (4) which provides as follows:-

“(4) Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in possession of either party have been served on that party, that is to say-

(a)

(b)

(c)

(d)

(e)

(f) *If the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal*

(g)

Provided that –

(i)

(ii) *The judge may dispense with the production of any document or part of a document which is not relevant other than those specified in paragraph (a), (b) and (f).*

The appellant did not extract the decree of the lower court and did not include it in his record of appeal. For that reason, and also because as I have stated before, the appeal has no merit. This appeal is dismissed with costs to the respondent.

Dated and delivered at Meru this 30th day of April 2010.

MARY KASANGO
JUDGE