

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 585 of 2006

MARION MUIRU NJUGUNA WAIRIMU.....APPELLANT

VERSUS

CAROLINE NJOKI.....RESPONDENT

RULING

1. Marion Muiru Njuguna Wairimu who is the appellant in this appeal has come to this court under Section 79G & 3A of the Civil Procedure Act, seeking to be allowed to file a supplementary record of appeal out of time, and that the supplementary record of appeal which she filed on 1st September, 2009, be deemed as duly filed. The appellant's counsel has sworn an affidavit in which she explains that there has been delay in filing the supplementary record of appeal including the decree because of delay in obtaining the decree from the lower court and from the Deputy Registrar.

2. Counsel explains that they were unaware of the orders made by the court on 12th June, 2009 as the counsel who was handling the matter was indisposed and did not attend court. Counsel contends that they filed the supplementary record of appeal immediately they received the decree on the 1st September, 2009. Counsel pleads with the court in the interest of justice to grant the orders sought.

3. The respondent objects to the application. She has sworn a replying affidavit in which she contends that the appellant's application is incompetent as it has been brought under wrong provisions of the law and also contravenes the law, and should be struck out with costs. In support of his submissions counsel for the respondent relied on *HCCC No.1470 of 2000 National Industrial Credit Bank Ltd vs Niazons (K) Ltd & 2 others*.

4. I have carefully perused the court record. I do note that the issue of the appellant not being able to obtain a copy of the decree was brought to the attention of the court on 12th June, 2009. The court directed the Deputy registrar to issue a copy of the decree to the appellant to enable the appellant to prepare and file a supplementary record of appeal including the decree. The court further ordered the matter to be stood over to 3rd July, 2009 for further directions. Although on the 6th November, 2009 I struck out the appellant's supplementary record of appeal on the grounds that the same ought to have been filed by 3rd July, 2009. That order was made under the wrong impression that an order had been made for the supplementary record of appeal to be filed by 3rd July, 2009. No such specific order was made although there was an implication that the decree would have been filed by that date to enable the court give directions.

5. It is evident from the face of the decree which has been exhibited as LM5 that the decree was actually issued by the Deputy Registrar on 26th August, 2009. Therefore, the appellant could not have complied with the court order of 12th June, 2009. I am satisfied that the appellant has satisfied this court that it is in the interest of justice to allow her to file the supplementary record of appeal. As for the prayer to have the supplementary record of appeal which was filed on 1st September, 2009 deemed as duly filed, this court struck out that supplementary record of appeal on 6th November, 2009. That order has not been set aside. Accordingly, the appellant must file a new supplementary record of appeal. I grant leave to the appellant to file the supplementary record of appeal containing the decree within 15 days from today. Costs of this application shall be costs in the appeal. Orders accordingly.

Dated and delivered this 30th day of April, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Ms Murungi for the appellant/applicant

Advocate for the respondent absent

Eric - Court clerk