



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Civil Appeal 46 of 1996**

**NJIRU MWAURA.....APPELLANT**

**VERSUS**

**JOHN MUNYI NJAGI.....RESPONDENT**

**R U L I N G**

The matter from which this Appeal arises was filed before the Principal Magistrate Embu on 28<sup>th</sup> January 1991. The same was heard before the Elders and their decision was filed in court and adopted by the learned trial magistrate. An Application to set aside the Award of the DO and Elders was dismissed on 19.02.92.

On 25.02.94 Counsel for the Respondent herein moved the magistrate for judgment to be entered in terms of the Award which was done. The magistrate also ordered that the Executive Officer of the court signs all the documents necessary to effect the transfer and further that a caution which had been lodged against the Respondents Title be vacated.

Those orders were granted on 25.03.94. There is nonetheless no decree in the file to that effect and it appears that none was extracted. Counsel for the Appellant nonetheless filed an Appeal against that Ruling on 23.05.94 citing several grounds of Appeal. I have read and considered the contents of the written submissions filed by counsel herein.

From the outset, I agree with Mr. Njiru for Respondent that there is no competent Appeal before me. This Appeal is fraught with a multitude of maladies. Firstly, the Appeal could not have been filed later than 25.02.94. The original petition of Appeal was filed on 23.05.94 i.e. 2 months late. No leave of the court was sought or granted as mandated by Section 79G of the Civil Procedure Act.

Secondly, the Appeal against the said ruling did not lie as of right and the magistrate's leave to file the Appeal was mandatory before the Appeal could be filed. There is no evidence of such leave having been sought and/or obtained.

As stated earlier on, there was no decree extracted which the Appellant is appealing against. It is trite law that an Appellant must attach a certified copy of the decree or order that is being appealed from and it is his duty to extract the same. It matters not that such a decree may form part of the original record. Indeed, in this case there was no decree extracted whatsoever. It is not clear therefore what the Appellant is appealing against. This "Appeal" is a total fiasco and ought not to have remained pending in court all these years.

The same is incompetent and it is hereby dismissed with costs to the Respondent.

**W. KARANJA**  
**JUDGE**

Delivered, dated and signed at Embu this 20<sup>th</sup> day of July 2010.

**In presence of:- Mr. Kariithi for Appellant and Mr. Njiru for Respondent.**