



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal 4 of 2006

BENJAMIN G. NDEGWA APPELLANT

Versus

DR. CHRIS MURUNGARU 1ST RESPONDENT

DR. MRS. MURUNGARU 2ND RESPONDENT

(Being an appeal against the ruling of E. J. OSORO – Senior Resident Magistrate in the Chief Magistrate’s Civil Suit No. 248 of 2005 at NYERI)

JUDGMENT

The appellant appeal relates to a ruling delivered by the Resident Magistrate Nyeri in Nyeri CMCC no. 248 of 2005 on 12th January 2006. In filing the record of appeal the appellant failed to extract and include that ruling in the record of appeal. Order XLI Rule 8B(4)(f) provides as follows:-

“8B(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 the possession of either party have been served on that party, that is to say-

(f) the judgment, order or decree appealed from,

and, where appropriate, the order (if any) giving leave to appeal;”

Further rule 8B (4) (g) (ii) provides as follows;

(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 paragraphs (a), (b) and (f).”

This rule makes it mandatory for the appellant to extract the order or the decree from which the appeal relates to. The appellant having failed to extract and attach that order to the record of appeal makes this appeal to be incompetent. For that reason this appeal is hereby struck out with costs being awarded to the appellant.

MARY KASANGO

JUDGE

Dated and delivered this 14th day of May 2009

M. S. A. MAKHANDIA

JUDGE