



ERNEST NJUGUNA MUTHEE.....APPELLANT

*Versus*

THE ATTORNEY GENERAL

*On behalf of The Children's Officer - Nyeri.....RESPONDENT*

*(Appeal from original Ruling and Order of the Senior Principal Magistrate Courts at Nyeri*

*in P & D Case No.313 of 2004 dated 10<sup>th</sup> February, 2005 by R.A.A.OTIENO - SRM)*

### J U D G M E N T

This appeal relates to a ruling and order delivered by the Senior Resident Magistrate Nyeri in Nyeri P & D case No.313 of 2005 on or about 10<sup>th</sup> February, 2005. 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 fatally incompetent. For that reason this appeal is hereby struck out with no order as to costs. I appreciate that this is an issue which was not canvassed by the appellant in his submissions. However since it is a matter of law and goes to jurisdiction I had to crapple with it, the absence of any input from the appellant and or respondent notwithstanding.

***Dated and delivered at Nyeri this 29<sup>th</sup> day of October, 2009.***

**M.S.A. MAKHANDIA**

**JUDGE**