

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 48 of 2005

JOHN MATHENGE W. SILAS GITHINJI K..... APPELLANT

VERSUS

ISAAC NGATIA NGORO RESPONDENTS

RULING

The respondent to the appeal has made an application by Notice of Motion dated 17th September 2007. That application is brought under section 3A of Civil Procedure Act. The respondent seeks the dismissal of this appeal for failure to attach a decree. In the affidavit in support the respondent stated that the Record of Appeal was filed on 27th February 2006. That that Record of Appeal is defective for lack of a decree. That the appellant has failed to pay further court fees to enable the decree to be drawn. According, the matter should be dismissed.

The application was opposed. In the Replying Affidavit the appellant deponed that on 19th June 2006 the court directed the appellant to extract the Lower Court Decree. The appellant further deponed that his advocate has made several correspondences to the respondent's advocate asking him to extract the decree to no avail. That his advocate further requested the Lower Court to certify a draft decree. The court has so far not certified the same.

It should be noted that on 19th June 2006 the court in entertaining a Chamber Summons dated 27th February 2006 directed that the decree be extracted for the purpose of this appeal. Despite this order the decree had not been extracted. Accordingly, the order that commend itself to this court is that a time limit be given to the appellant to provide that decree. I do not accept the argument by the appellant that is the responsibility of the respondent to extract the decree. The appellant having filed this appeal has a responsibility to extract the decree to be included in the Record of Appeal. According I grant the following orders;-

1. That the appellant do file the Lower Court's decree within 14 days from this date hereof and in default this appeal stands as dismissed with costs of the same being awarded to the respondent in the appeal.

2. The costs of this Notice of Motion dated 7th September 2007 are awarded to the respondent to the appeal in any event.

Dated and delivered at Nyeri this 22nd day of April 2008.

MARY KASANGO

JUDGE