

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 453 of 2000

ANGELA NYAWIRA NJAGI.....APPELLANT

VERSUS

SARAH NJOKI KIHARA.....RESPONDENT

R U L I N G

By this Notice of Motion expressed to be brought under Sections 3A and 79B of the Civil Procedure Act and Order XLI Rule 8B (4) of the Civil Procedure Rules the Respondent seeks orders that the appellant's record of appeal be struck out. The application is based on the ground that the order appealed from is not included in the record of appeal and that so far the appellant has filed three different records of appeal. The first one was filed on 11th February 2003. The appellant filed yet another supplementary record of appeal on 21st May 2007 and went ahead to fix the appeal down for hearing before directions were taken.

Mr. Kamau counsel for the respondent submitted that on 22nd May 2007 the court noted that the record of appeal was improper and ordered the appellant to file a proper record of Appeal and ordered that the matter be mentioned on 29th May 2007 to ascertain compliance and yet again the allegedly proper record of appeal so filed was defective and urged the court to strike it out.

Mr. Kimana counsel for the appellant in reply admitted that what counsel said was true but submitted that he only came on record on 24th May 2007 and that he has now filed a proper record on 28th September 2007. But having perused the record of appeal filed by the appellant on 28th September 2007. I find it also defective and the same is struck out with costs for being incompetent.

It is so ordered.

Dated and delivered at Nairobi this 23rd day of May 2008.

J. L. A. OSIEMO

JUDGE