



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NYERI

Civil Appeal 10 of 2000

WANJAU MWANGI ..... PLAINTIFF

Versus

NGARI MWANGI .....DEFENDANT

RULING

The respondent raised a preliminary objection to this appeal on the basis that the same was filed out of time. The respondent submitted that the lower court's judgment was delivered on 17<sup>th</sup> November 1999. He did however concede after the court drew his attention that the lower courts judgment was not dated. He however proceeded to argue that the appeal was filed out of time. The appellants advocate in response submitted that since there was no date indicated in that judgment the appeal was filed in time. **Order XX Rule 3(1)** of the Civil Procedure Rules provides:-

***“A judgment pronounced by the judge who wrote it shall be dated and signed by him in open court at the time of pronouncing it.”***

I have examined the lower courts judgment and although it is signed by the learned magistrate it was not dated. Failure to date it went contrary to the mandatory requirement of the above rule. Having failed to comply with that rule such a judgment cannot be relied upon in this appeal. The appellant's submission that because the judgment was not dated the appeal is valid is not correct. In making this finding I rely on the case of **SHUNGULI AND ANOTHER vs RAMA (1995-98)2 EA** where the court ruled as follows:-

***“Mr. K’Owade at the opening of the hearing of the appeal contended in time that the judgment is dated 8 June 1990 but delivered on 14 June 1990 and signed on both those dates. This is in breach of the mandatory provision of Order XX, Rule 3(1) of the Civil Procedure Rules as it does not comply with the said order and is invalid. Accordingly the appeal before us is rendered incompetent and is hereby struck out with no order as to costs”.***

The present appeal due to the non compliance to that rule is incompetent and invalid. The preliminary objection or the respondent succeeds to that extent. Accordingly the appeal is hereby struck out with costs to the respondent.

**DATED AND DELIVERED THIS 23<sup>RD</sup> DAY OF JUNE 2008**

**MARY KASANGO**

**JUDGE**