

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 661 OF 2003

SOCFINAF COMPANY LIMITEDAPPELLANT

VERSUS

KINYANJUI KARURESPONDENT

RULING

Following the decision of the lower court, the appellant was aggrieved thereby and filed the present appeal. However, the entire original lower court record could not be availed because it was destroyed by a fire that took place at the court premises at Gatundu.

The record of appeal does not therefore contain the proceedings, Judgment and decree of the lower court. However, photocopies of all the pleadings, submissions by counsel and some exhibit are contained in that record. It is clear that the appeal cannot proceed without the lower court record from which the said appeal arises. The learned counsel for the appellant has moved the court for the substantive order that the judgment of the lower court is set aside and the case be heard afresh.

The circumstances obtaining present a unique challenge yet a solution must be found so that the ends of justice are met. This is an old matter as the cause of action to have taken place on 9th July, 2002 going by the copy of the plaint in the record.

This appeal was filed on 7th October, 2003 following the judgment which was delivered on 11th September, 2003. A lot of time has gone by but in view of the fact that the lower court record is incomplete without the original file the only order that commends itself is a retrial. Accordingly the lower court judgment is hereby set aside alongside the proceedings in their entirety. There shall be a retrial based on the copies of pleadings on record. This retrial shall be conducted expeditiously in view of the obtaining circumstances. Each party shall bear their own costs.

Dated, signed and delivered at Nairobi this 1st Day of February, 2007

A. MBOGHOLI MSAGHA

JUDGE