

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Civil Appeal 51 of 1999

KIMATU MBUVI.....APPELLANT

VERSUS

PATRICK WAMBUA JOHN.....RESPONDENT

RULING

Mr Muriungi has applied for an order of this court directing the Deputy Registrar of this court to request for the proceedings of Kangundo Senior Resident Magistrate Civil Case No.280 of 1998 together with all the original exhibits produced during trial and copies of typed proceedings and certified copies of judgement to be forwarded to this court for purposes of the hearing and disposal of the appeal filed herein. It also seeks this courts directions as to the admission or rejection of the appeal as filed and directions thereby as to service of the memorandum of appeal on the respondent if necessary or called for; and further for direction as to the hearing of the appeal if at all.

The applicant lodged his appeal against the Kangundo Senior Resident Magistrate's Court decision on the 19th April, 1999. To date the proceedings and judgement of the lower court have never been forwarded to the High Court. Therefore the appeal has remained pending for the last 12 years. The applicant fears and justifiably so, that the defendant may move the court for the dismissal of this appeal. The delay that has caused the appeal to remain pending for so long cannot be blamed on the appellants/applicant as it is beyond his power or control.

I have perused the record of appeal herein and I find that a letter written by the Deputy Registrar of this court to the Resident Magistrate at Kangundo asking for the proceedings and judgment in January, 2005 went unanswered. It was not the first time that such a letter had been written to the Resident Magistrate with similar results.

I now make an order requiring that a summons requiring the attendance of the Executive Officer in charge of the Resident Magistrate's Court Kangundo Civil Registry to appear before this court and either produce the entire record of Kangundo RMCC NO.280 of 1998 together with the exhibits therein and failing that, a record to show its whereabouts. The date of the hearing of the Executive Officers explanation to be given in Court.

Dated at Machakos this 17th day of **May, 2006.**

J. LESIIT

JUDGE

17/5/2006