

IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Appeal 83 of 2004

A.M. OGETA APPELLANT
VERSUS
JOYCE WAMUTIRA NYAMU..... RESPONDENT

R U L I N G

This appeal was filed on 26.7.2005 challenging the decision of Hon. Mrs U.P. Kidula Chief Magistrate in CMCC No. 4253 of 2003. on 4.8.04 the respondent filed a cross appeal.

On 17.9.2004 the Deputy Registrar High court called for original record, certified copies of judgement, proceedings and exhibits. To-date the same have not been made available to the High Court Registry.

On 21st October 2004, this Notice of Motion was filed seeking to strike out appeal and to hear the cross appeal. Without the court record the Appellate Court is not in a position to comply with Section 79B of Civil Procedure Act.

At the moment the appeal is not admitted to hearing. After admission the court has to comply with Order 41 rule 8A and 8B civil Procedure Code.

Unless these three steps are taken by the Court – the appeal cannot come to a hearing.

In these circumstances I find no merit into his application and the same is dismissed with costs.

Dated 29th July 2005.

J.N. KHAMINWA
JUDGE