

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Civil Appeal 48 of 1999

**CHARLES WANJOHI MUTHUMBI APPELLANT
VERSUS**

GRACE NYAWIRA MAHANI DEFENDANT

R U L I N G

On 12th January 2004, the Appellant and Respondent through their respective counsel entered into a consent to have the record of appeal in this appeal filed within 30 days and that the appeal to come for direction on 13th February 2004.

When the matter came up for mention before the Deputy Registrar on 13th February 2004, no record of appeal had been filed whereupon Mr. Wahome who was appearing for the Respondent applied to the court to refer the original file back to the lower court to enable him proceed with the execution process. The record does not show Mr. Karingithi who was appearing for the Appellants objecting to that application.

The appellants now blame Mr. Karingithi for failing to comply with the order. The applicants have annexed receipts of payments made to Mr. Karingithi on 16th February 2004 and 20th February 2004 in respect of record of appeal. Although these payments were made after 13th February 2004, it is apparent that Mr. Karingithi who had conduct of this matter for the Appellants does not appear to have conducted himself professionally.

He was still on record for the Appellants and the least he should have done is to explain to the court why the order of 12/1/04 had not been complied with. I am inclined to accept the explanation of the Applicant that they were let down by Mr. Karingithi. The applicant has clearly explained that the further delay was occasioned by the execution process which was initiated against him and his efforts to have the execution stayed.

It is further evident that the applicants have a plausible appeal which has already been admitted to hearing. In the circumstances it would be fair and just to extend the time for filing the record of appeal to give the Applicant a chance to be heard on his appeal.

I do therefore allow the application dated 7th July 2004 and order that the Applicant shall file and serve the record of appeal within 14 days from the date hereof.

Orders accordingly.

Dated this 20th day of July 2005

H. M. OKWENGU

JUDGE