



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
CIVIL APPEAL 5 OF 2005

1.ABUBAKAR OMAR
RIDHIWAN

2. FATUMA
OMAR

3. MAALIM MOHAMED.....APPELLANTS

VERSUS

1.ALI HAJI
BINI

2.LALI
AHMED

3.HARITH AHMED.....RESPONDENTS

RULING

When this appeal came before me for directions under Section 79 (B) of the Civil Procedure Act, Mr.Ole Kina for the respondents sought to have the record of appeal struck out for the reason that the same was not certified. Counsel was not, however, able to specify the provision of the law making it mandatory that the record of appeal be certified. I am also not able to identify any.

A practice has, however evolved where the Deputy Registrar issues a certificate under Section 79 (B) of the Civil Procedure Act, and places the appeal before the judge for directions. This was done in this appeal. When the appeal comes for directions, any objection to the jurisdiction may be raised before directions are given.

The only explicit requirements is that the judge must be satisfied the documents listed below are on the Court record before appeal goes to hearing. They are,

- a) the Memorandum of appeal;
- b) the pleadings;
- c) the notes of the trial magistrate made at the hearing;

- d) the transcript of any official shorthand or Palantypist notes made at the hearing;
- e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate
- f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal.
- g)

See Order 41 rule 8B (4) C.P.R.

It will be observed that in contrast to Rule 85 of the Court of Appeal Rules, this rule does not require the above documents to be certified although as a matter of practice they are normally certified.

But even if it was a requirement under the rules, to my mind failure to comply with such a requirement cannot affect the merits of the appeal and therefore cannot vitiate the same. I find that the record is in order.

It is directed that this appeal shall be heard by one judge assisted by two Kadhis as assessors in terms of Section 65 (C) of the Civil Procedure Act.

Once a date is taken, Kadhi, Lamu and Kadhi, Malindi will be notified accordingly.

Dated and delivered on Malindi this 20th day of September, 2005.

W.OUKO

JUDGE

20.9.2005

Ouko, J

Mr.Gekanana for appellant

N/a for Mr.Ole Kina for respondent

C.C: Mr.Matu/Linda

Ruling delivered.

W.OUKO

JUDGE