REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL CASE NO. 271 OF 2010

OCCIDENTAL INSURANCE COMPANY LTD……………………..……………APPELLANT

VERSUS

ABRAHAM NJAGI NJIRU & MORRIS W. NJIRU……………………………RESPONDENT

RULING

The application dated 25th April 2013 by the Respondents/ applicants **Abraham Njagi Njiru** and **Moris W. Njiru** seeks from this court orders for dismissal of the appeal filed on 12th July 2010 by the appellant Occidental Insurance Co. Ltd against the Order/ Ruling of the Hon. Mrs. P. Gichohi Senior Principal Magistrate in Nairobi CMCC 2623 of 2009 delivered on 22nd June 2010 for want of prosecution.

The respondents/ applicants also pray for costs of the appeal and application herein to be borne by the appellant insurance company.

The application is premised on the grounds that

1. The appeal was filed on 12/7/2010
2. Final orders on stay of execution pending appeal were given on 13/12/2011 in a ruling by Hon Lady Justice R.N. Sitati read by Hon. M. Justice Mwera.
3. The appellant was supplied with copies of proceedings by a letter dated 10/4/12 and reminders to do a record of appeal were sent on 4/6/12 and 4/2/2013.
4. No action has been taken to get the appeal heard.

The application was further supported by the affidavit of Nelson Kaburu Felix sworn on 25th April 2013.

The application was brought under the provision of Section 3A of the Civil Procedure Act.

In his supporting affidavit, counsel for the applicant Mr. Kaburu deposes the facts as contained in the grounds attaching copies of letters of reminders to the appellant to expedite the compiling of record of appeal and submitting to the appellant's advocates certified copies of ruling appealed from the same is marked exhibit A.

The application was as expected opposed by counsel for the appellant/ Respondent Mrs.Kuria who not only filed a replying affidavit sworn by Jenipher Catherine Ombonya advocate on 13th October 2014 but also filed Notice of preliminary objection dated the same day. Seeking to have the application dismissed on the grounds that:

1. The application is incurably defective for being brought under the wrong provisions of the law;
2. That the application is defective in form
3. That the application is an abuse of the process of court as it is premature.

Nevertheless before filing objections to the application herein, counsel for the appellant did compile and file a record of appeal on 3rd July 2014 to demonstrate that they had not lost interest in the prosecution of the appeal.

In her replying affidavit, Mrs Ombonya deposes that the application is premature as directions have not been given which is a condition precedent for a Respondent filing an application seeking dismissal of an appeal for want of prosecution.

Further, that the appellant had provided security for the due performance of decree in the sum of shs. 547,165 as shown by the court's deposit slip No. 0003149.

Further, that the appellant had now filed a record of appeal comprising 224 pages and had served the same upon the Respondent's counsel Mr. Kaburu on 13/10/2014.

That todate, despite requests to the lower court, it has not issued the appellant with a certified order issued on 22/6/2010.

That she wrote to the Deputy Registrar on 3/7/2014 requesting for admission of the appeal to facilitate the taking of directions but that the appeal has not been admitted. That the appellant is ready, willing and eager to have the appeal prosecuted and that no prejudice is occasioned to the Respondent as the decretal sum is secured and that this court should admit the appeal for hearing and give directions as it deems fit.

The parties agreed to dispose of the application by way of written submissions with the applicant's advocates filing theirs on 10th November 2014 whereas counsel for the appellants/ Respondents filed theirs on 25th November 2014.

According to counsel for the applicant, litigation giving rise to this appeal commenced in 2004 and that the original plaintiff died and therefore could not enjoy the damages for the pain and suffering which are now being pursued by her estate. That the appellant was guilty of laches and had not taken the necessary steps as required under the prescribed law within the prescribed time.

1) That the appeal was not filed together with a certified copy of the decree or order appealed against or as soon as possible as required by Order 42 rule 2 of the Civil Procedure Rules and that such failure had hampered the process of the court considering whether or not to summarily reject the appeal under Section 79 B of the Civil Procedure Act and that the appellant could sabotage the prosecution of the appeal by simply not filing the decree or order since the appeal cannot be considered for admission without it.

In his view, the Rule 2 of Order 42 of the Civil Procedure Rule has some sense of urgency to get the appeal determined expeditiously.

Further, that even if the record of appeal was filed on 3/7/2014, the same was filed belatedly late to scuttle the application under review and even if this were not to be the case, still, the record does not contain the impugned order or decree which, it is submitted, was not applied for hence the court could not submit what was not asked for. That it is the duty of the appellant to prepare draft decree and submit it to the opposing party for approval or amendment and then to court for issue which had not been done by the

appellant, contrary to the express provisions of the law- Order 21 rule 8(5) as read with rule 2,3 and 4 of rule 8 of the Civil Procedure Rules

That appeals are not admitted by the Registrar but by Judges and that failure to respond to the reminders sent by the Respondent demonstrates indolence; that there is no legal requirement for lower court proceedings to be typed before the record is prepared or directions are given as it is the duty of the judge admitting the appeal to direct as to the typing of any record or part thereof under Rule 13 (3).

That the appellant is in breach of all the rules regarding the preparation and setting down the appeal for hearing and the timelines thereof hence the matter qualifies for dismissal for want of prosecution.

Counsel for the Respondent cited **Muranga HCCA 85/2013** to support the proposition that a record of appeal filed without a decree which is a central document is fatally defective and ought to be struck out.

Further, it was submitted that this court ought to have acted on its own motion under Order 42 rule 35 (1) of the Civil Procedure Rule or under the inherent power of sections 3 & 3A of the Civil Procedure Act to dismiss the appeal for inaction. Citing **David Silverstein Vs Atsango Chesoni CA NR B 189/2001,** he urged the court to strike out the appeal for being incompetent as was in the above cited authority. Counsel urged this court to dismiss an appeal which had not been prosecuted for a long time without just cause for the delay. He referred to

HCC 2047/2000 where a defence which was not served within the seven days prescribed was struck out on the ground that "**no wrong ought to be without a remedy".**

And further, that in **CA 56/98** the court struck out a notice of Appeal filed out of the stipulated time for being incompetent.

Further reliance was placed on **South Coast Fitness And Sports Center Ltd Vs Clarkson Notcutt Ltd (2000) I & A page 230** where an appeal was struck out because the appellant had failed to collect the corrected proceedings for a period of three years and six months which was held to be inordinate or unreasonable as the appellant had not shown a single letter requesting for corrected proceedings after returning them to court.

Counsel for the applicant further submitted that there is an array of authorities including **CA NR 54/2000 & CA NR 62/2000** where the courts held that long and unexplained delays of 3 months and 91 days respectively disentitles a party favourable exercise of discretion.

In addition, that timelines provided in the statutes and Rules are not merely procedural but substantive and breach thereof has consequences citing **CA NR 56/98** where a notice of appeal served outside the prescribed seven days period was struck out, a similar position taken in **HCC 2047/2000**. The applicants concluded that the overriding objectives espoused in section 1A and 1B of the Civil Procedure Act and the provisions of Article 159 of the constitution were meant to avoid such delays caused by application of technicalities but not to aid parties who have not complied with the rules as has thereby delayed proceedings as was held in **CA NR 255/2010**, maintaining that in this case the appellant went to slumber from 12/7/2010 when the appeal was filed hence the application should be allowed as prayed.

Mr. Kaburu's citations above are, to say the least, incomplete.

In response to the application and submissions by the applicant, the Respondent/ appellants counsel filed their submissions on 25/11/2014 relying entirely on the affidavit in reply as sworn by Jenipher Catherine Ombonya on 13th October 2014 giving the background to the facts giving rise to the judgment in the subordinate court and the appeal herein. She urged the court to consider the fact that the substance of the appeal was that the appellant's defence was struck out without giving it an opportunity to be heard yet they had no valid Insurance policy cover with the owner of the motor vehicle registration No. KAL 255Q at the material time of an alleged accident, which amounted to a miscarriage of justice.

It is further submitted that as the appeal herein was filed on 12/7/2010 before the 2010 Civil Procedure Act & amendments to the Rules became effective, the applicable law in the circumstances is the 1985 Revised edition of the Civil Procedure Act and Rules as to do otherwise would be applying the law retrospectively. In her view, the relevant provision is the old order XLI of the Civil Procedure Rules and not order 42 of the 2010 Civil Procedure Rules. That they applied and paid for the order appealed from but todate the same has not been submitted and that Order XX rule 7 (5) and 6 of the Civil Procedure Rules places the duty of preparing draft orders/ decrees in the subordinate courts to the court not to the parties.

Further, that absence of a certified copy of the order or dcreee appealed from is not fatal under order XLI rule 1 (A) as the court has powers to allow the appellant to file such a certified copy as soon as possible and or direct that such decree be drawn up.

That there is no indication from this court as to whether it summarily rejected the appeal or even called for the lower court file in accordance with Order XLI rule 8, 8A and 8B on service of Memorandum of Appeal and listing of the appeal before a judge in chambers for the giving of directions within the 21 days after service of the Memorandum of Appeal on every Respondent by the Registrar.

That this appeal cannot be dismissed as prayed for want of prosecution as directions have not been given and that it is at the time of giving such directions that the court is able to satisfy itself as to whether all the requisite documents as stipulated in Order XLI rule 8B (4) (a) - (g) of the Civil Procedure Rule are available or not.

That it is only after directions are given under rule 8B that the appellant is required to set down the appeal for hearing within 3 months and in default ; the Respondent could either list the appeal for hearing or apply for its dismissal by a Chamber Summons.

In addition, that if within one year after the service of the Memorandum of Appeal, the appeal shall not have been set down for hearing the registrar shall on notice to the parties list the appeal before a judge in Chambers for dismissal.

That under the old rules, the preparation of the record of Appeal is not a precondition to the matter being listed for directions. She further submitted that it is in the interest of the appellant to have the appeal determined expeditiously as it deposited the decretal sum in court and that this court has inherent powers under Section 3A of the Civil Procedure Act to make such orders as may be necessary for the ends of justice or to prevent the abuse of the court process.

Counsel urged this court to invoke Article 159 2 (d) of the Constitution not to elevate matters of procedure above the substance law and justice as that would go against the spirit of the Constitution. She also relied on the case of **Microsoft Corporation Vs Mitsubishi Computer Garage Ltd (2001) 2 EA 461** to the effect that Rules of procedure are the hand maidens and not the mistresses of justice. It would be (sic) to elevate form and procedure to a fetish to strike out the suit on account of the defective affidavits".

On whether this court can strike out the appeal as sought, counsel for the appellant urged the court to uphold the principle in **DT Dobie & Co (K) Ltd Vs Muchina (1982) KLR 2** that to strike out the appeal without hearing the parties on merit should not be employed by the court which should aim at sustaining rather than terminating the suit.

She urged the court to dismiss the application as filed with costs.

I have carefully considered the applicant/ Respondent's application seeking to have the appellant's appeal herein dismissed for want of prosecution, the supporting affidavit thereof, annextures and the reply thereto by the appellant's counsel together with the elaborate written submissions as filed and the cited authorities on the subject. However, as I have indicated above, most of Mr. Kaburu's authorities have incomplete citations hence I could not access them as they were not annexed to his submissions.

The main issue for determination is whether the applicant has satisfied the court on his application for dismissal of the appeal herein as filed on 12/7/2010 for want of prosecution.

Before delving into the merits of the application, it is important to determine the applicable law. Whether it is the post 10/9/2010 or pre 10/9/2010 Civil Procedure Rules and Act.

Principally, no law operates retrogressively. Consequently the applicable law for the dismissal of the appeal filed on 12/7/2010 is the 1985 edition of the Revised Civil Procedure Act and Rules which were amended later vide gazette Notice of 10/9/2010.

Having so decided that it is the pre10/9/2010 rules that apply in the circumstances of this case, the relevant provisions are order 41 Rule 31 (1) of the Civil Procedure Rules, details of which I will refer to later in this ruling.

The issues for determination are:

1. Whether the appellant has been vigilant in prosecuting the appeal; if not
2. Whether the appeal should be dismissed for want of prosecution; and if not, what orders should the court make.

1) On whether the appellant has been vigilant in prosecuting the appeal, the record shows that the appeal was filed on 12/7/2010 and on the same day, the appellant's counsel M/s Ombonya & Co Advocates wrote to the lower court requesting for certified copies of proceedings and Ruling and order made on 22/6/2010 for purposes of appeal which request was received on 21/7/2010.

On 22/7/2010, the appellant filed an application before this court seeking for stay of execution of the Order/ Ruling/ Judgment delivered on 22/6/2010 in Nairobi CMCC 2623 of 2009.

On 23/7/2010, Hon Justice K.H. Rawal granted an exparte order of stay conditional upon the appellant depositing in court the whole of the decretal sum before 5/8/2010 which order was complied with on 30/7/2010 by the appellant depositing shs. 547, 165 into court vide receipt no. 0003149.

The interpartes hearing came up before Hon. Kimaru J on 5/8/2010 but the parties agreed to have the same heard on 20/9/2010 by consent.

On 20/9/2010, the matter came up before Hon.R.N. Sitati J who heard the parties viva voce on the application for stay interpartes which hearing continued until 8/12/2010 when a ruling was set for 4/3/2011 at 12.00 noon.

On 13th December, 2011, the Ruling by Hon. R. N. Sitati J was delivered by Hon. Mwera J granting a conditional stay upon the decretal sum deposited in court by the appellant being deposited in an interest earning account in the joint names of the advocates appearing for the parties within 15 days from the date of the Ruling.

It appears that that condition could not be met within the timeline as given by the court hence, on 20/2/2012 by an application dated the same day, the appellant sought enlargement of time for complying with the condition set by Hon. R.N. Sitati J as the Respondent's counsel were allegedly uncooperative in that they had deliberately failed to complete the forms to facilitate opening of a joint interest earning account in both names of the advocates as ordered by the court and within the 15 days stipulated in the ruling thereby frustrating compliance with the order of the court.

In the meantime, counsel for the Respondent by his letter dated 18/1/2012 was threatening to execute decree and was demanding for payment to avert warrants as the 15 days condition for depositing the money in a joint interest account had lapsed on 31/12/2011.

It is worth noting that the decretal money, at that moment, was being held by the court and not the

appellant.

There is evidence on record that indeed the appellant's counsel had submitted the necessary documents to the Respondent's counsel as at 23/2/2011 but no action or response had been received from the latter. The said application was heard and determined by Hon. Mary Angawa J.

On 29th February 2012 allowing it and ordering that in the event that the joint account was not opened as directed within the enlarged 15 days, the said sums would remain deposited in court till finalization of the appeal and a stay pending appeal herein was accordingly confirmed.

From thence, there are no proceedings on record to show what action has been taken by either party to have the appeal herein heard until 22/4/2014 when the Respondent/ applicant filed a notice of motion dated 25th April 2013 seeking to have the appeal herein dismissed for want of prosecution and annexed copies of letters written to the appellant's counsel dated 10/4/2012, 4/6/2012 and 4/2/2013 imploring them to prepare the appeal for hearing and even attaching copies of certified proceedings in the lower court to enable compilation of a record of appeal but the Respondents/ appellant never cared to respond or act on those reminders.

When confronted with those facts, the appellant who seriously opposed this application swiftly moved in and compiled, filed and served upon the Respondent with a record of appeal filed on 3/7/2014 before filing their replying affidavit to the application on 14/10/2014 in which it is deposed that they had written to court on 3/7/2014 by a letter dated 1/7/2014 requesting the Deputy Registrar to admit the appeal and that as the appeal had not been admitted, and or directions given, the appeal could not be dismissed for want of prosecution.

No doubt, from 29/2/2012 to 22/4/2014 which is 2 years and nearly 2 months, the appellant did not take any steps necessary for the prosecution of the appeal herein despite the fact that they had deposited in court the whole decretal sum as a condition for the stay of execution pending appeal.

There was therefore clear delay and an inordinate one at that in prosecution this appeal.

Under the old order XLI Rule 31 (1) of the Civil Procedure Rules which are no doubt applicable in the circumstances of this appeal filed prior to the promulgation of the new rules in September 2010, a respondent had the liberty to either set down the appeal for hearing or apply by summons for its dismissal if, within 3 months after giving of directions Under Rule 8B the appeal had not been set down for hearing by the appellant.

The said Rule 8B of the CPR provides thus:

> **"On the notice to the parties delivered not less than 21 days after the date of service of the Memorandum of appeal the Registrar shall list the appeal for giving of directions by a judge in Chambers".**

There is no evidence that any directions have been given in this matter or that the Registrar had even listed the appeal for giving of directions by a judge in chambers.

Other than the filing of record of appeal on 3/7/2014 after the appellant had been woken up from the slumber to have this appeal dismissed for want of prosecution, there is nothing on record to show any activity from the appellant. The said record of appeal, admittedly has no order/ decree appealed from as the same has not been issued by the lower court despite a request filed on 12/7/2010, which appear not to have been followed up, and even after the respondent availed to the appellant a certified copy of proceedings vide their letter of 10/4/2012, the appellant never took any action to prompt the court to issue them with a decree/order extract or to even prepare a record of appeal and lodge it, however incomplete, until about 2 ½ years later prompted by this application.

For the above reasons, I find that the appellant or their advocates acted indolently and as a result, delayed

the prosecution and determination of this appeal.

2) On whether the appeal herein should be dismissed for want of prosecution.

The appellant's counsel has vigorously defended the appeal and submitted that as directions have not been given under rule 8B of Order XLI, the appeal cannot be dismissed by the court and that it is in the interest of substantive justice that the appeal be heard on merit.

The applicant /Respondent's counsel on the other hand submits that there has been inordinate delay and non-compliance with the timelines given under Order 42 Rule 35 of the Civil Procedure Rules hence, such non compliance invites no discretion from the court to sustain the appeal.

My view is that this court can still exercise its unfettered discretion to dismiss the appeal for want of prosecution even before directions are given taking into account the circumstances of each individual case, by invoking the provision of Order XLI Rule 31 (2) of the Civil Procedure Rules which provides that:-

XLI Rule 31 (2)

> "**If within one year after service of the Memorandum of appeal, the appeal shall not have been set down for hearing, the Registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal".**

It is therefore not true as submitted by appellant's counsel that an appeal can only be dismissed for want of prosecution after giving of directions.

Order XLI Rule 31 (1) is applicable after taking of directions under Rule 8B whereas Rule 31 (2) applies where no directions have been given. The latter rule, in my view, was enacted with a view to prevent litigants from keeping appeals pending in court in perpetuity and invoking rule 31 (1) that "**directions have not been given"** or that "**the appeal has not been admitted to hearing",** by giving the court the power, on its own motion, to dismiss dormant appeals.

In this case, one year had lapsed since the last order of the court had been made on 29/2/2012. There is no plausible reason advanced why there was inaction to have the appeal prosecuted, following the necessary procedures provided for in law.

3) On what orders this court should make in the circumstances of this case, I note that the appeal herein was filed on 12/7/2010, which is over 4 ½ years ago and that it was active for the first 2 years and thereafter the appellant, upon complying with court orders for depositing of security for the due performance of decree went to slumber.

I further note that the lower court record for NRB CMCC 2623 of 2009 has never been availed to this court to facilitate admission or otherwise rejection of this appeal summarily as contemplated in section 79B of the Civil Procedure Act which provides

> "**79B. Before an appeal from a subordinate court to the High court is heard, a judge of the High court shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of a decree or order appealed against he may, notwithstanding section 79C , reject the appeal summarily"**

Albeit the Respondent's advocates were proactive enough to obtain and supply the appellant's counsel with certified copies of proceedings, and albeit the appellant has hurriedly compiled an incomplete record of appeal and asked this court to admit the appeal through their letter to the Registrar dated 1/7/2014, the said admission cannot be done before the lower court file is availed to the appeal file.

Under the old Rules, it is the Registrar who is under a duty to call for the lower court record. My perusal

of the file herein does not reveal any attempt to call for the lower court record by the Registrar of this court.

It was not within the province of the appellant to call or avail the lower court file to this court. That being the case, notwithstanding the omission by the appellant, I am unable to exercise my discretion to have the appeal herein dismissed for want of prosecution as prayed.

I further decline to strike out the appeal for alleged non-compliance with the laid down procedural timeline required under the new 2010 Civil Procedure Rules as the appeal was filed before the said timelines became effective, in as much as I accept that there has been delay in processing this appeal for hearing. I have weighed the prejudice that may be occasioned to the appellant if it is ousted from the judgment seat by dismissal or striking out of the appeal. If the appeal fails, the Respondent shall be adequately compensated by an award of costs and the already secured decretal sum. I reiterate my various rulings including in Nairobi **HCCA 648/2012** that a party who avails themselves to the jurisdiction of this court seeking to ventilate their grievances should not be ousted from the seat of justice. And since the enactment of Section 1A and 1B of the Civil Procedure Act and Article 159 2 (d) of the constitution, this court is reluctant to strike out or dismiss suits on procedural lapses especially where the adverse party, like in this case, has shown willingness to pursue the appeal with alacrity following a wake up call by the Respondent seeking to have the appeal terminated.

The filed record of appeal may be incomplete as admitted by the appellant, but that can be cured by the filing of a supplementary record of appeal with leave of the court.

As was held in **Abdirahman Abdi Vs Safi Petroleum Product Ltd & 6 Others (2011) Eklr CA NR 173/2011** where a notice of appeal was served on the Respondent out of time and without leave of the court.

Upon being asked to strike out the said Notice of Appeal, the court of Appeal stated thus:-

> **"The overriding objective in civil litigation is a policy issue which the court invokes to obviate hardship, expense, delay and to focus on substantive justice……"**
>
> **In the days long gone, the court never hesitated to strike out a notice of appeal or even an appeal if it was shown that it had been lodged out of time regardless of the length of delay. The enactment of sections 3A and 3B of the Appellate jurisdiction Act, Cap 9 Laws of Kenya, and later, Article 159 (2) (d) of the constitution of Kenya, 2010, changed the position.**
>
> **The former provisions introduced the overriding objectives in Civil litigation in which the court is mandated to consider aspects like the delay likely to be occasioned, the cost and prejudice to the parties should the court strike out the offending document.**
>
> **In short, the court has to weigh one thing against the other for the benefit of the wider interests of justice before coming to a decision one way or another.**
>
> **Article 159 (2) (d) of the constitution makes it abundantly clear that the court has to do justice between the parties without undue regard to technicalities of procedure.**
>
> **That is not however to say that procedural improprieties are to be ignored all together. The court has to weigh the prejudice that is likely to be suffered by the innocent party and weigh it against the prejudice to be suffered by the offending party if the court strikes out its document. The court in that regard exercise judicial discretion".**

As I have reiterated the above principles in HCCA 6481/2012- **Benson Mangera & Another Vs Wambua Mbura**, although the court of Appeal in the Abdirahman Abdi case above was dealing with striking out of a notice of appeal on the basis that it was served on the respondent out of time and without leave of court, the jurisprudence laid by that court which is superior to this court is that the courts in

exercising judicial discretion to strike out a document or suit like in this case, must weigh the prejudice that is likely to be suffered by innocent party against the prejudice to be suffered by the offending party if the court proceeds to dismiss the appeal.

The delay in prosecuting the appeal has no doubt occasioned delayed justice to the respondent who has a lawfully obtained judgment against the appellant insurance company. On the other hand, the judgment impugned, is alleged to have been given through denial of a right to fair hearing of the appellant. Justice ought not to be delayed. Whereas expedition must be weighed against fairness. The appellant should not, in my view, be denied a fair hearing by this court.

I am of the considered view that it will be in the wider interest of justice to exercise my unfettered discretion to excuse the appellant's delay and accord it an opportunity to take necessary pending steps to ensure that the appeal herein as filed and the record of appeal is compiled in full for the hearing of the appeal to be conducted.

Accordingly, I decline to grant the order sought for dismissal of the appellant's appeal for want of prosecution and or for non-compliance with the procedural requirements under the new Civil Procedure Rules and direct as follows:

1. The appellant do file and serve upon the Respondent a Supplementary record of appeal containing all the necessary documents including the order or decree appealed from, within 21 days from the date of this ruling.
2. The Deputy Registrar of this court do call for the entire file and record of the subordinate court into this court for purposes of consideration of the appeal herein under Section 79B of the Civil Procedure Act by any judge of the High Court Civil Division.
3. Directive (2) above to be complied with forthwith to facilitate the expeditious disposal of this appeal and the appeal be listed for directions within 30 days from the date of consideration by the judge of the appeal under Section 79B of the Civil Procedure Act.
4. As the appellant/Respondent herein was responsible for the delay herein provoking the filing of this application, I order that they pay to the Respondent/applicant costs of this application to be assessed by the court notwithstanding the pending and outcome of the appeal.

Dated, Signed and delivered at Nairobi this 2nd day of February 2015.

R.E. ABURILI

JUDGE

2/2/15

Coram Hon. Aburili J

CC- Kavata

Miss Mabele holding brief for Mrs Wachira for appellant

N/A for Respondent

Court- Ruling read and pronounced in open court at 2.30 as scheduled.

R.E. ABURILI

JUDGE

2/2/2015