



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITALE  
Civil Appeal 8 of 2008  
MESHACK BUNGUSWA MUSUNGU..... APPELLANT.**

**VERSUS**

**KIBARNO PETER KIMAGUT .....RESPONDENT.**

**R U L I N G.**

By a Notice under order XLI Rule 8 B of the Civil Procedure rules the Registrar listed the appeal for directions before me.  
Order XLI Rule 8 B provides:-

“(1) *On notice to the parties delivered not less than*

*twenty-one days after the date of service of the memorandum of appeal the registrar shall list the appeal for the giving of directions by a judge in chambers.*

(2) *Any objection to the jurisdiction of the appellate court shall be raised before the judge before he gives directions under this rule*

(3) *The judge in chambers may give directions concerning the appeal generally and in particular directions as to the manner in which the evidence and exhibits presented to the court below shall be put before the appellate court and as to the typing of any record or part thereof and any exhibits or other necessary documents and the payment of the costs of such typing whether in advance or otherwise.*

(4) *Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say –*

(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) *where the appeal is from a decision of a subordinate court given in the exercise of its appellate jurisdiction, the documents corresponding to those specified in paragraphs (a) to (f) inclusive so far as they relate to the appeal to such subordinate court;*

*Provided that –*

(i) *a translation into English shall be provided of any document not in that language;*

(ii) *the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f)”*

I have scanned through the record of appeal and taken the view that the record, *prima facie*, is in order:-

I have obligation under order 8 B Rule 4 to satisfy that the following documents are in order.

- (a) Memorandum of Appeal in Kitale High Court Civil Appeal No. 8 of 2008.
- (b) Proceedings before the Rift Valley Provincial Land disputes Appeals Committee
- (c) Proceedings in Kitale CMCCC Land Case No. 7 of 2008.
- (d) Letter.
- (e) Decree in Kitale CMC Land Case No. 7 of 2008.
- (f) Proceeding before the Saboti Land Disputes Tribunal.
- (g) Letter
- (h) Decree in Kitale SPMC Land Case No. 1 of 2008.
- (i) Memorandum of Appeal to he Provincial Land Disputes Appeals Committee.
- (j) Ruling in Kitale High court Misc. Civil Application No. 37 of 1997.
- (k) Proposed sub-division.

I have scanned through the record of appeal and have noticed that sketch map at page 32 is faint.

Accordingly, I order that the appellant do by a supplementary record of appeal put in a fair copy of the said sketch map (memo of appeal ruling). Thereafter the appellant will be at liberty to set the appeal once again for directions before me.

Dated and delivered at Kitale this 6<sup>th</sup> day of October, 2009.

**N.R.O. OMBIJA.**

**JUDGE.**

Mr. Ngeiywa for Appellant.

Mr. Ingosi for Respondent.