

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
(CORAM: GICHERU, KWACH & SHAH, J.J.A.)
CIVIL APPEAL NO. 29 OF 1998
BETWEEN
PAUL MUTURI MUNDUI)
RUCHU GAITHO) APPELLANTS
AND
WANJIRA KIENYERE GICHANGI
JOSEPH GICHANGI KIENYERE
KENNETH KANYIRA KIENYERE
LYDIA WANJIKU KIENYERE
ANNA WANJIKU KIENYERE
JOYCE WANGARE KIENYERE
JOSEPHAT GATHUA KIENYERE
PAUL GITAHU KIENYERE RESPONDENTS**

**(Appeal from the judgment and decree of the High Court of Kenya at Nakuru (Tunoi, J.A.)
delivered on the 6th day of July, 1995**

in

H.C.C.C. NO. 5 OF 1988)

ORDER OF THE COURT

Mr. Konosi has applied to withdraw this appeal on the ground that the record of appeal is defective as it does not contain a certified copy of the decree as required by rule 85 (1) (h) of the Rules of this Court. This renders the appeal incompetent and incapable of withdrawal.

Although the appeal was lodged more than a year ago, no sevice has been effected on the respondents with the result that they were denied an opportunity to file any application under rule 80 to strike out the appeal. In the circumstances, we order the appeal struck out with costs to the respondents.

Made at Nakuru this 24th day of February, 1999.

J. E. GICHERU

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JUDGE OF APPEAL

R. O. KWACH

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR