



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(CORAM: TUNOI, SHAH & PALL, J.J.A.)

CIVIL APPLICATION NO. NAI. 329 OF 1995

BETWEEN

KITHAKA NTHAKANIO APPLICANT

AND

THATHI NTHAKANIO RESPONDENT

**(Appeal from a Judgment and decree of the High Court of Kenya
at Meru (Justice S.O. Oguk) dated 12th July, 1990**

in

H.C.C. APPEAL NO. 97 OF 1988)

RULING OF THE COURT

This is a reference to full Court against the ruling of the learned single Judge of this Court whereby he exercised his discretion under rule 4 of the Rules of this Court in favour of the respondent and granted him extension of time for lodging the Notice of Appeal and the record of appeal. Mr. Njage, counsel for the applicant, asks us in this reference under rule 54(1) (b) to vary, discharge or reverse the decision of the single judge on the ground that, he, in the exercise of his discretion failed to take into account a relevant matter which he ought to have taken into account. The matter allegedly omitted to be considered is that judgment was entered in terms of the award in July, 1990, and; therefore, it would be an exercise in futility and prejudicial to the applicant if the respondent was given an extension for time to perfect his appeal in view of the provisions of Order 45 rule 17(2) of the Civil Procedure Rules.

At the hearing of the application it was not shown to the satisfaction of the learned single judge that judgment had so been entered. In his ruling he observed:

"It is not clear whether or not after the applicant's appeal in the High Court at Meru was dismissed judgment was entered in terms of the award notwithstanding that the respondent proceeded as if that was so The record of this application is deficient in this regard."

The applicant has tried to introduce additional evidence before us to show that judgment had been entered. But rule 54(2) of the Rules of this Court expressly says that no additional evidence shall be adduced at a full court hearing like the one before us.

On the material before him, the learned single judge arrived at a correct decision and we see no reason to think otherwise. This reference is accordingly dismissed with costs to the respondent assessed at Shs.1,000/=.

Dated and delivered at Nyeri this 28th day of October, 1997.

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

G.S. PALL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR