



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, AKIWUMI & SHAH, J.J.A.)

CIVIL APPEAL NO. 35 OF 1996

BETWEEN

ELIJAH WAMBUGU MURIITHI.....APPELLANT

AND

MOSES MATHENGE MURIITHI)

STEPHEN NDERITU MURIITHI).....RESPONDENT

(Appeal from the Judgment and decree of the High Court of Kenya at Nairobi (Justice Githinji) dated 11th May, 1995

IN

H. C. C. NO 2755 OF 1994)

RULING OF THE COURT

There is a notice of motion before us taken out by the respondents under rules 80 and 85(1)(f) of the Court of Appeal Rules to strike out the appeal on the ground that the record of appeal was not served on the respondents within 7 days after lodging as required by rule 87(1) of the Rules of this Court. This default is admitted by the appellant in his replying affidavit. The other ground on which counsel for the respondents relies is that the record of appeal lodged did not contain vital documents produced at the trial in breach of rule 85(1)(f) of the Rules of this Court. This default is also admitted by the appellant in his replying affidavit although he says that he has put the matter right by filing a supplementary record of appeal containing those documents.

There is no doubt that the documents left out are primary documents which cannot be introduced by way of a supplementary record of appeal. There are numerous decisions of this Court to that effect.

In the result the application succeeds and the appeal is hereby struck out as it is clearly incompetent. The respondents will have the costs of both the appeal and the motion.

Dated and delivered at Nairobi this 23rd day of September, 1996.

R. O. KWACH

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JUDGE OF APPEAL

A. M. AKIWUMI

.....

JUDGE OF APPEAL

A. B. SHAH

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR