



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: MADAN, LAW JJA & HANCOX Ag JA)

CIVIL APPEAL NO. 44 OF 1982

MZAMIL.....APPELLANT

VERSUS

ANSARI..... RESPONDENT

RULING

We have before us an application by the respondent, filed on January 19, 1983 for the appeal to be struck out on the ground that the record of appeal does not include a certified copy of the defence. The decree included in the record is one which has not been approved by the appellant or by the court. Mr Mulwa for the appellant concedes that the application is valid, but he applied in terms of an application filed on January 27, 1983, for an extension of time in which to file the correct decree, which is included in a supplementary record of appeal, filed on January 25, 1983.

An essential document such as a decree cannot be brought on record by means of a supplementary record see *Kiboro v Posts and Telecommunications Corporation* [1974] EA 155. It is accordingly for Mr Mulwa to satisfy us that sufficient reason has been shown for extending time under rule 4 of the Rules of this Court, and this task Mr Mulwa relies on the affidavit of his junior, Mr Asige, sworn in support of the application to extend time. This affidavit contains a number of striking inconsistencies and contradictions, which we find difficult to reconcile. For instance, Mr Asige received from Mr Magan, the respondent's advocate, a copy of the decree which should have formed part of the record, on or about June 14, 1982 and he depones that he signed it as approved and sent it to the Registrar for approval, but it seems unlikely that this is what happened, as it was not in fact signed and sealed by the Registrar until September 13, 1982, some three weeks after the record of appeal was lodged, when it was sent to him by Mr Magan for approval and sealing. The High Court file does not support Mr Asige's statement that it was he who submitted it to the registry. What does appear in the record of appeal is second draft decree, sent by Mr Magan to Mr Asige on July 2, 1982 which Mr Asige says "missed my attention" and was never signed by him or submitted to the registry for sealing. Mr Asige does not seek to explain how a document, which missed his attention came to be included in the record of appeal.

Mr Asige also depones that the wrong decree was bound into the record when it was being bound, which was at the time the second decree was received by him, which was July 2, 1982. But the record of appeal cannot have been in the process of being bound at that time, as certified copies of the proceedings were not supplied until July 21, 1982 as Mr Asige had deponed in the same affidavit. In view of these inconsistencies and contradictions with which Mr Asige's affidavit bristles, we do not think the application for an extension of time can succeed. Sufficient reason cannot be established on the basis of

an obviously incorrect affidavit. It follows that we allow Mr Magan's application, with costs and order that the appeal be struck out as incompetent, with costs. We dismiss Mr Mulwa's application for an extension of time, also with costs. And it is so ordered.

Dated and Delivered at Mombasa this 31st January, 1983

C.B.MADAN

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JUDGE OF APPEAL

E.J.E. LAW

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JUDGE OF APPEAL

A.R.W. HANCOX

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Ag JUDGE OF APPEAL