



IN THE COURT OF APPEAL

AT NAIROBI

(Coram:Law, Potter JJA & Simpson Ag JA)

CIVIL APPEAL NO. 6 OF 1980

BETWEEN

NDUTI.....APPELLANT

AND

NG'ANG'A.....RESPONDENT

JUDGMENT

The appeal set down for hearing today is hopelessly irregular. The respondent's advocate, by notice of motion served on the appellant's advocate on October 30, 1980 pointed out in his supporting affidavit.

- a) that no notice of appeal had been served on him;
- b) that no decree was included in the record of appeal, and we are told that no decree has been extracted to this day;
- c) that the documentary evidence exhibited at the trial is not included in the record.

Notwithstanding this notice, the appellant's advocate took no steps to regularize the position, until three days ago when he filed an affidavit intimating that he would today make an informal application for extensions of time to remedy the admitted fundamental defects in the record of appeal. We do not intend to grant any such indulgence. No sufficient reason has been shown under Rule 4 of the Rules of this Court to justify the exercise of our discretion in favour of the appellant, and to overlook the irregularities and delays which have attended the presentation of this appeal. We order that the appeal be struck out as incompetent, with costs, to include the costs of today's proceedings, that is to say of the respondent's notice of motion and of the appellant's informal application.

Dated and Delivered at Nairobi this 16th day of February 1981.

E.J.E.LAW

.....

JUDGE OF APPEAL

K.D.POTTER

.....

JUDGE OF APPEAL

A.H.SIMPSON

.....

AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR