



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: G. B. M. KARIUKI, ODEK & SICHALE, JJ.A)**

**CIVIL APPEAL (APPLICATION) NO. 94 OF 2014**

**BETWEEN**

**DORIS M. WANJIRU KINUTHIA AND TWO OTHERS .....APPLICANT/RESPONDENT**

**AND**

**PURITY NDIRANGU ..... RESPONDENT/APPELLANT**

***(Being an application to strike out the record of appeal against the Judgment and Decree of the High Court of Kenya at Nairobi (Kimaru, J.) dated 20<sup>th</sup> June, 2013***

***in***

***SUCCESSION CAUSE NO. 1574 OF 1994)***

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**RULING OF THE COURT**

The appellant **PURITY NDIRANGU** (the then respondent) was aggrieved by the ruling of L. Kimaru, J. dated 20<sup>th</sup> June, 2013, and filed this appeal. **ANTHONY KARANJA, DORIS M. WANJIRU KINUTHIA** (the then petitioners) and **AMOS KINUTHIA** (the then interested party) were named as the first, second and third respondents respectively.

It was during the pendency of the appeal that the applicant **DORIS M. WANJIRU KINUTHIA** (the 2<sup>nd</sup> respondent in the appeal) filed the Notice of Motion dated 30<sup>th</sup> May, 2014. She sought the following orders:

- “1. THAT the Record of Appeal herein be struck out for lack of primary documents and for having been filed and served when incomplete.
2. THAT such other and/or further order be made as the Honourable Court may deem fit and just.
3. THAT the Applicant herein be granted the costs of this Application and Appeal in any event.”

The Notice of Motion was supported by the affidavit of **DORIS M. WANJIRU KINUTHIA** of the same date. In the main, she deposed that the appellant/respondent had omitted “fundamental documents consisting of primary documents” in the record of appeal.

In response **ANTHONY KARANJA**, the first respondent herein swore a replying affidavit on 31<sup>st</sup> December, 2014 and deposed that the application was devoid of merit. Advocate F. K. Omenya from the firm of Mosi and Company Advocates on behalf of an unnamed respondent refuted the averment that the record of appeal was incomplete.

During the plenary hearing before us on 30<sup>th</sup> April, 2015 respective counsel reiterated the averments in their depositions. Admittedly the appellant did not file the entire record as according to the respondents other documents/grants made in the High Court were not relevant for the purposes of the determination of this appeal.

We have considered the Notice of Motion application, the affidavits in support of the application as well as the affidavits opposing the motion. **Rule 88** of this Court’s Rules provides that an appellant may within 15 days of filing the appeal and without leave file a supplementary record of appeal.

On expiry of the 15 days, an appellant may with the leave of the Court file such a supplementary record. The appellant in this case did not avail himself of any of the above options.

Be that as it may, **rule 92** provides as follows:

***“92 (1) – if a respondent is of the opinion that the record of appeal is defective or insufficient for the purposes of his case, he may lodge in the appropriate registry four copies of a supplementary record of appeal containing copies of any further documents or any additional parts of documents which are, in his opinion, required for the proper determination of the appeal.”***

Hence under the rules, this is a shared responsibility between an appellant and a respondent. If the appellant failed to include all the documents relevant to the appeal, the rules obligate the respondent to share in this responsibility. The petition for grant of letters of administration, an application for revocation of the grant were for instance not part of the record. The onus was also on the applicant to file a supplementary record for the completeness of the record.

The application to strike out the appeal on the basis that the record is incomplete, cannot therefore succeed.

Be that as it may and noting the incompleteness of the record, we direct that the appellant shall file a supplementary record of appeal so as to include

**“such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant”** as decreed by Rule 87 of this Court’s Rules

within 30 days from today’s date. The costs of this application shall be borne by the appellant/respondent.

**Dated and delivered at Nairobi this 19<sup>th</sup> day of June, 2015.**

**G. B. M. KARIUKI**

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**JUDGE OF APPEAL**

**F. SICHALE**

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**JUDGE OF APPEAL**

**J. OTIENO-ODEK**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

