



**IN THE COURT OF APPEAL OF KENYA**  
**AT NYERI**

**Civil Appli 319 of 2006 (NYR.15/06)**

**SIMON NDUNGU ..... 1<sup>ST</sup> APPLICANT**

**JOSEPH WAWERU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**KANGATHIA KIUNA ..... RESPONDENT**

***(Application to strike out Notice of Appeal in an intended appeal from the ruling of the High Court of Kenya Nyeri (Okwengu, J.) dated 19<sup>th</sup> July, 2005 in H.C.MISC.APPLICATION NO. 191 OF 1999)***

**\*\*\*\*\***

**RULING OF THE COURT**

By this application expressed to be brought under rule 80 of the Rules of this Court, the applicants seek orders that the Notice of Appeal filed in *H.C.Miscl.Civil Application No. 191 of 1999* (Nyeri) on 25<sup>th</sup> July, 2005 be struck out on the ground that no record of appeal has been lodged within the time stipulated by the Rules.

It is common ground that the respondent applied for the copies of the proceedings on 21<sup>st</sup> July, 2005 but to date the proceedings have not been received. The applicants have themselves confirmed that they received the copy of the letter bespeaking of the proceedings. In the circumstances the application now before us, is premature and ought not to have been instituted in the first place as time has not been exhausted within the meaning of **rule 81(1)** of the Rules.

In the result, this application fails and is dismissed. However, as the applicants are unrepresented and were genuinely interested in seeing that the intended appeal is disposed of expeditiously, there shall be no order as to costs.

***Dated and delivered at Nyeri this 11<sup>th</sup> day of May, 2007.***

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**S.E.O. BOSIRE**

.....

***JUDGE OF APPEAL***

***W.S. DEVERELL***

.....

***JUDGE OF APPEAL***

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

**DEPUTY REGISTRAR**