



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MOMBASA**

Civil Appli 51 of 2005

GETRUDE CHAO WAITA APPLICANT

AND

PETER KINYUA MUCHENDU RESPONDENT

**(Application to strike out the notice of appeal from a ruling of the High Court of Kenya at
Mombasa (Sergon J.) dated 27th June, 2003**

in

H.C.C.C. NO.72 of 2003

RULING OF THE COURT

This is an application under **rule 80** of the Court of Appeal Rules seeking an order striking out an appeal which is not identified in the motion.

That being the case and in absence of the record of appeal relating to it, we are unable to appreciate the issues raised. Besides, even if the record were available, the reasons given for seeking to have that appeal struck out do not fall within the ambit of **rule 80** of the Rules of this Court.

It is also quite clear to us that documents which are not of primary nature, if they are omitted from the record of appeal, they may be put by way of a supplementary record with leave of the court in the case of the appellant, and by the respondent pursuant to **rule 89(1)** of the Rules.

As for the form and contents of an order appealed from, under **O.XX rule 7**, of the Civil Procedure Rules, it is not the function of this Court to approve the correctness or otherwise of an order drawn by the superior court. **Rules 85(1)(h)** of the Rules merely requires that the record of appeal includes copy of a certified order from which an appeal is preferred, which, the respondent says he did.

In the result this application has no merit and is accordingly dismissed with costs.

Dated and delivered at Mombasa this 28th day of July, 2006

R.S.C. OMOLO

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

J.W. ONYANGO OTIENO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR