

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

(CORAM: OMOLO, O’KUBASU & GITHINJI, J.J.A.)

CIVIL APPEAL (APPLI) 24 OF 2004

BETWEEN

SAMWEL ORUCHO ONYARU APPLICANT/RESPONDENT

AND

SAMWEL NYAKENOGO RESPONDENT/APPELLANT

**(Application to strike out Record of Appeal in Civil Appeal No. 24 of
2000 being an Appeal from the judgment and decree of the High
Court of Kenya at Kisii (Birech, Commissioner of Assize) dated 30th
September, 2002**

in

H.C.C.C. NO. 173 OF 1999 (O.S.)

RULING OF THE COURT

We have before us an application brought by way of notice of motion, in which the applicant asks us to strike out the Record of Appeal for being “*fatally and incurably defective*”. The grounds upon which this motion is brought are that there is no valid order appealed against, that the decree and the memorandum of appeal are at variance.

We have perused the record of appeal filed herein but the grounds set out in the motion are clearly baseless. In our view, this is a frivolous application which ought not to have been filed.

In view of the foregoing, we order that the notice of motion dated 15th September, 2004 and filed in this Court on 4th October, 2004 be and is hereby dismissed. Costs of the motion shall be in the appeal.

Dated and delivered at Kisumu this 24th day of June, 2005.

R. S. C. OMOLO

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JUDGE OF APPEAL

E. O. O’KUBASU

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JUDGE OF APPEAL

E. M. GITHINJI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR