

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

(CORAM: TUNOI, O’KUBASU & WAKI, J.J.A.)

Civil Appeal 177 of 2005

BETWEEN

MUSA CHERUTICH SIRMA..... 1ST APPLICANT/RESPONDENT

HENRY NGETICH 2ND APPLICANT/RESPONDENT

THE ELECTORAL COMMISSION OF KENYA..... 3RD

APPLICANT/RESPONDENT

AND

JOSEPH LEMBO ROP RESPONDENT/APPELLANT

(Application to strike out record of appeal from the ruling
and order of the High Court of Kenya at Nakuru (Justice
Muga Apondi) dated 30th July, 2004

in

H.C.ELECTION PETITION NO. 5 OF 2003)

RULING OF THE COURT

The notice of motion dated the 20th July, 2005 was taken out by the 1st respondent in the main appeal. It seeks an order that the appeal be struck out for the reasons; firstly that the order which is the basis of the appeal is incurably defective, and secondly, that the letter bespeaking copies of proceedings was not copied to them, thus rendering the filing of the appeal out of time.

Learned Counsel for the appellant in the main appeal, Mr. Oduor, concedes that those defects render the appeal incompetent and we so find ourselves. Consequently, the application is granted and the appeal filed on 14th July, 2005 is hereby struck out. Costs of the application and of the appeal to all the respondents.

DATED this 29th day of September, 2005.

P.K. TUNOI

.....

JUDGE OF APPEAL

E.O. O’KUBASU
.....
JUDGE OF APPEAL

P.N. WAKI
.....
JUDGE OF APPEAL

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