



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAKURU**  
**(CORAM: GICHERU, LAKHA & KEIWUA, JJ.A)**  
**CIVIL APPEAL NO. 215 OF 1999**  
**BETWEEN**

**SAMUEL NDURA KANYARA ..... APPELLANT**  
**AND**  
**MARY NJAMBI ..... RESPONDENT**

**(Appeal from an order of the High Court of Kenya at  
Eldoret (Mr. Justice Anganyanya) dated 3rd February,  
1994**

**in  
H.C.C. APPEAL NO. 152 OF 1993)**

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**RULING OF THE COURT**

Counsel for the respondent applies that the appeal herein be struck out because the order appealed from is not included in the record of appeal and that the appeal has been brought without leave in that the application for leave had been made outside the fourteen days allowed for that purpose. We agree that the order appealed from is not in the record of appeal. We also see that the appellant did not have leave of the superior court to appeal to this Court because his application for leave dated June 29, 1994 had not been granted by the learned Judge who instead enlarged time within which to appeal. We therefore uphold the objection by the respondent that the appeal be struck out for being incompetent and we strike out the same with no order as to costs.

**Dated and delivered at Nakuru this 26th day of September, 2001.**

**J.E.**

**GICHERU**

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**JUDGE OF APPEAL**

**A.A.**

**LAKHA**

.....

**JUDGE OF APPEAL**

**M.**

**Ole**

**KEIWUA**

.....

**JUDGE OF APPEAL**

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