**Gitau v Arap Bii and another**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 22 July 2005

**Case Number:** 255/04

**Before:** Deverell JA

**Sourced by:** LawAfrica

*[1] Appeal – Primary documents – Failure to include primary documents in the record of appeal fatal.*

**Editor’s Summary**

By notice of motion dated 7 April 2005, the applicant sought an extension of the thirty (30) days time limit imposed by the *proviso* to rule 80 for applying to strike out a notice of appeal or an appeal. The delay in the matter had been three months. The reasons given for the delay by the applicant’s counsel, were that he had been concentrating on attempting to have the appeal as a matter of urgency but when that failed he turned his attention to perusing the record and it was then that he noticed that the record did not include copies of the original plaint, defence and counterclaim, which he believed to be primary documents.; that due to pressure of work, as well as the Christmas vacation, he was unable to ascertain the full legal implications of the missing pleadings until 1 March 2005 when previous authorities of the Court of Appeal were brought to his attention, holding that failure to include primary documents in a record of appeal rendered the appeal incurably defective.

**Held** – Delay which has the effect of more than doubling the period allowed for filing an application for striking out an appeal, is inordinate. “Pleadings” are mandatorily required to be included in the record of appeal unless a direction from a judge or a registrar has been made that the pleadings, in question, should be excluded from the record pursuant to rule 85(3).

**No cases referred to in judgment**