



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**CIVIL APPEAL NO. 668 OF 2003**

**DR. MICHAEL OLING WANGA .....APPELLANT**

**VERSUS**

**PHARMACEUTICAL MANUFACTURING**

**COMPANY .....RESPONDENT**

**((Being an appeal from the Judgment and decree of Senior Magistrate N.A Owino (Mrs) in CMCC  
No. 1720 of 2011 delivered on 11<sup>th</sup> September, 2003)**

**RULING**

This is an appeal arising from the decision of the lower court delivered on 11<sup>th</sup> September, 2003. For some reason this appeal has been pending for quite some time. There is a record of appeal, a supplementary record of appeal and a further supplementary record of appeal.

The objection raised herein relates to the further supplementary record of appeal which is said to have introduced fresh evidence in the appeal which was not part of the original trial.

I am supposed to make a decision as to the admissibility of new documents in the further supplementary record of appeal before I move on to decide on the merits of the appeal. I know the implication of Order 42 of the Civil Procedure Rules and in particular rule 27 (1) and (2). If I were to admit the said documents as evidence at this stage considering the nature of such evidence, I shall be denying the respondent the opportunity to cross-examine the appellant on such evidence.

On the other hand, I have noted the submissions of the appellant relating to the said documents and have formed the view that had they been produced in the lower court, they would have been relevant in deciding the dispute between the parties.

Having said so, the order that commends itself in the circumstances of the case is that this appeal is hereby allowed and the entire judgment of the lower court set aside. The dispute between the parties herein shall be remitted to the lower court for retrial before another magistrate of competent jurisdiction.

Considering the age of the dispute herein, the Deputy Registrar of this court shall transmit the entire record to the Chief Magistrate within seven (7) from the date of this ruling with specific directions that the matter shall be given priority for hearing.

Costs in the cause.

***Dated, signed and delivered at Nairobi this 16<sup>th</sup> Day of June, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**