



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Civil Appeal 136 of 2007**

**MARITE ENTERPRISES LTD..... APPELLANT**

**VERSUS**

**WILLIAM KAMITI ..... RESPONDENT**

**RULING**

As I sat down to craft the judgment in this appeal, it occurred to me that the appeal had been heard rather prematurely and without complying fully with the terms of the order I made herein on 8<sup>th</sup> June 2009. The terms of that order were that the appellant was granted leave to file a supplementary record of appeal. Once that was done, parties would move the court for directions in terms of order XLI rule 86 of the Civil Procedure Rules. It would appear that part of the said order was complied with. That is with regard to the filing of the supplementary record of appeal. However instead of the parties complying with 2<sup>nd</sup> part of the order aforesaid, they instead proceeded to file and exchange written submissions. The court without being appraised of the fact that directions had yet to be given proceeded to give a date for judgment. Obviously this was

irregular. The requirement for directions to be given by a judge in the appeal before it is set down for hearing is mandatory. This having not been done, it cannot be rightly be said that the appeal was ready for hearing. In the premises I would expunge from the record the proceedings of 17<sup>th</sup> July 2009 as well as the respective written submissions filed and exchanged.

I further direct that the parties move the court as appropriate for directions in terms of order XLI rule 8B aforesaid.

***Dated this 29<sup>th</sup> day of September 2009.***

**M. S. A. MAKHANDIA**

**JUDGE**