



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Civil Appeal 48 of 2004**

**ITA MBARIKO.....APPELLANT**

**VERSUS**

**JOSPHAT NJIRU NJOKA.....RESPONDENT**

**JUDGMENT**

The appellant filed suit in Siakago SRM CC No. 4 of 2004. The suit was dismissed by the court. The Appellant has filed 6 grounds of appeal. The crucial evidence is of the agreement to exchange the trees. None of the Appellant's witnesses were able to testify positively about the agreement alleged by the Appellant (Plaintiff). His witnesses were his son and nephew whose evidence the Trial Magistrate found not independent. The (defendants) Respondents witnesses are some of the elders who are said to have tried to resolve the case. They gave hearsay evidence on the agreement. Their evidence was hearsay and therefore unreliable. There was no evidence of the value claimed by the Appellant.

On the whole, I find no evidence was produced to warrant a decision for Appellant.

This Appeal is now dismissed.

Dated this 1<sup>st</sup> February, 2008.

**J. N. KHAMINWA**

**JUDGE**

**1/2/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Ithiga HB**

**Read in open court.**

**J. N. KHAMINWA**

**JUDGE**