

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 650 of 2003

MARGARET KALIESA INDUMWAAPPELLANT

**ERIC O. INDUMWA (both suing as personal representative
Of the estate of the late DAVID INDUMWA GALO)**

- VERSUS -

PETER KOSKEI1ST RESPONDENT

KENYA COMMERCIAL BANK2ND RESPONDENT

***(An appeal from the Ruling of the Senior Principal Magistrate at Milimani Commercial
Courts, Mr. Nyakundi dated 5th day of September 2003 in RMCC No. 8513 of 1999)***

J U D G M E N T

From what has been brought to my attention during the hearing of this appeal the same is hereby dismissed with costs to the Respondent for the following reasons:-

Firstly, although it is stated that the appeal is from the ruling of the Senior Principal Magistrate at Milimani Commercial Courts dated 5th September 2003 in RMCC No.8518 of 1999, reading the grounds of appeal in the Memorandum of Appeal in the light of what counsel for the Appellant Mr. Amendi has said reveals that this appeal is against orders wider than the ruling dated 5th September 2003. An example is ground number 6 stating:

“The learned magistrate misdirected himself when he refused to grant the request for an adjournment when such request was the only and first one by the advocates on record.”

Where did that happen in the proceedings in which the ruling dated 5th September 2003 was delivered? That makes this appeal bad in law and therefore incompetent.

Secondly, in the ruling dated 5th September 2003, the learned magistrate who was exercising his discretion gave good reasons for his decision and I find no misdirection on the law or misapprehension on the facts or that the learned magistrate took into consideration what should not have been taken into consideration or left out considerations which should have been taken into account. Otherwise I do not find his decision to have been wrong.

Dated this 21st day of June 2007.

J.M. KHAMONI

JUDGE