



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

**Civil Appeal 86 of 1994**

**HANNAH GATHONI**

**MAINGI.....APPELLANT/APPLICANT**

**Versus**

**JAMES MWAI P. NGANDA.....**

**....RESPONDENT**

**RULING**

Much has been brought to my attention during the hearing of the Appellant/Applicant's Notice of Motion herein dated 11th August, 2005. But the more I heard and read what was brought to my attention the more I became convinced that I was hearing an appeal disguised as an application under section 3A of the Civil Procedure Act, Order XXI Rule 25 and Order L Rules 1 and 2 of the Civil Procedure Rules and all other enabling provisions of the law.

I have been made to sit on an appeal against my own decision in contravention of the law and correct procedure and it is highly questionable whether the filing of the said Notice of Motion is not in itself an abuse of the process of the court.

As I had no jurisdiction to hear and determine the issues raised before me during the hearing because they are issues to be determined by the Court of Appeal, I hold the view that this Notice of Motion is incompetent and improperly before me and the same is hereby dismissed with costs to the Respondent.

Dated at Nyeri this 29<sup>th</sup> day of May, 2006.

**J. M. KHAMONI**

**JUDGE**