



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

**CIVIL APPEAL NO. 199 OF 2003**  
**MUNICIPAL COUNCIL OF MOMBASA ..... APPELLANT**

**- Versus -**

**STEPHEN KIUNGA t/a**  
**KANJALU BUILDING CONTRACTORS ..... RESPONDENT**

**R U L I N G**

Mr. Areba agrees that at the time of entry of judgment in the court below, the time for filing of the defence was not got up. It therefore follows that the judgment in the lower court was irregularly entered.

For this reason I do not need to consider the requirements of Order 41 Rule 3 of the Civil Procedure Rules. The Appeal has overwhelming chance of success. Failure to serve the memorandum of appearance of the plaintiff does take away the defendant's right to file defence. I allow this application and order that the costs be in the appeal.

**DATED this 16th day of February 2004.**

**D.K. Maraga**  
**Ag. JUDGE**