



**REPUBLIC OF KENYA**  
**HIGH COURT AT BUSIA**  
**CIV APP NO. 40 OF 1998**

**MIRIAM NALIAKA ..... APPELLANT**

**VS**

**BETH WANJIRU KAMOTHO ..... RESPONDENT**

**R U L I N G**

This appeal came up for hearing on the premise that all the preliminary procedures have been complied with under the provisions of Order XLI of the Civil Procedure rules. Being vigilant I had to satisfy myself that I was dealing with a competent appeal by perusing the record of appeal. The record discloses that directions in this appeal were taken on 18th November 2002 pursuant to the provisions of Order XLI rule 8 B (1) of the Civil Procedure rules before the Deputy Registrar of this court.

The Deputy Registrar obviously did not have jurisdiction to give directions under the law. The provisions of Order XLI rule 8 B (1) provides:

“On notice to the parties delivered not less than twenty -one days after the date of service o f the memorandum of appeal the registrar shall list the appeal for the giving of directions by a Judge in chambers.”

Consequently there were no competent directions to enable this appeal to be listed for hearing. I hereby exercise my inherent power to set aside the directions given by the Deputy Registrar on 18.11.2002 ex-debito Justitae.

Thus in the absence of directions, then this appeal cannot be said to be ready for hearing. Hence the proceedings or submissions of 2nd March 2004 were prematurely taken. I will set aside the proceedings and direct the parties to take competent directions as prescribed by law.

**DATED AND DELIVERED THIS 4th DAY OF June 2004**

**J.K. SERGON**

**JUDGE**