



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 1393 OF 1997**

NZUKI MWINZI.....DEFENDANT

VERSUS

KENYA NATIONAL ASSURANCE CO. LTD. & ANOTHER.....PLAINTIFF

**RULING**

Mrs. Mwenesi raises a preliminary objection to the application on the ground that the application on the ground that the application does not fall under the provision of order 20 of the Civil Procedure Rules as there is no decree in existence in this suit.

The circumstances which led to the application objected to were that following the filing of the suit the parties reached a settlement and recorded a consent order in which the applicant was to pay the sum of Shs.4,016,333/30 within 60 days. According to Mrs. Mwenesi for thereto be a decree there must have been adjudication which leads to the termination of the proceedings under order 24th Rule 6 of the Civil Procedure Rules, where by an agreement between the parties the question of liability is settled it constitutes a conclusive determination of the matters in controversy in the suit. In Lal Singh v. Munish Ram & Co. (1937) 4 Eaca 9. (CAK) it was held that where a suit has been settled by a compromise recorded under the rule the decree is passed upon the new contract between the parties which supercedes the original cause of action. Section 67 (2) of the Civil Procedure Rules provides that no appeal shall be from a decree passed by the court with the consent of the parties. My reading of this Section 67 and order 24 rule 6 is that a consent order is a decree. One has to bear in mind that in determining whether an order constitutes are decree one has to look at the substance and not the form. The objection is ove ruled.

**Dated and delivered at Nairobi this 9th February, 2000.**

**KASANGA MULWA**

**JUDGE**