



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAKURU**  
**(CORAM: OMOLO, TUNOI & LAKHA, J.J.A.)**  
**CIVIL APPEAL NO. 216 OF 1998**

BETWEEN

TRANS-NATIONAL BANK LIMITED .....APPELLANT  
AND  
WILLIAM KOSKEI AKUI .....RESPONDENT

(An appeal from the Ruling and Order of the High Court  
of Kenya at Eldoret (Hon. Lady Justice R. Nambuye) dated  
26th June, 1998

in

H.C.C.C. NO. 263 OF 1996)

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**JUDGMENT OF THE COURT**

This is an appeal against the Ruling of the Superior Court (Nambuye, J) delivered on 30th June, 1998 whereby she set aside the ex parte judgment and gave leave to the respondent to defend or file defence on condition. This was clearly in exercise of her discretionary powers. We have not been persuaded that the learned judge in the exercise of her discretionary power committed any error in principle or otherwise. If anything, it is conceded that no prejudice would be occasioned by the order of the learned Judge. All in all we are not satisfied that this matter calls for any interference from this Court on the facts of this case.

Accordingly, the appeal is dismissed but with no order as to costs.

**Dated and delivered at Nakuru this 22nd day of September, 1999.**

R. S. C. OMOLO

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A. A. LAKHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR