



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**

**AT KISUMU**

**CIVIL APPEAL 87 OF 1998**

**THE PHARMACY AND POISONS BOA.....APPELLANT**

**AND**

**SIPRI PHARMACEUTICALS LIMITED.....1ST RESPONDENT**

**COMMISSIONER OF CUSTOMS & EXCISE.....2ND RESPONDENT**

**(Application to strike out the memorandum and record of appeal in Civil Appeal No. 87 of 1998 in an appeal from the ruling and order of the High Court of Kenya at Kisumu (Wambilyangah, J.) dated 2nd December, 1997**

**in**

**H.C. MISC. C. NO. 101 OF 1997)**

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**RULING OF THE COURT:**

This is an application under rule 80 of the Court of Appeal Rules for an order striking out the appeal. The grounds upon which the order is sought are -

- (1) That the record of appeal does not contain a certified copy of the order appealed against in breach of rule 85(1)(h) of the Court of Appeal Rules.
- (2) That the Chamber Summons dated 6th August, 1997 which was the originating process has not been included - rule 85(1)(C).
- (3) That the Record of Appeal has not been certified as correct as required by rule 85(5) of the Court of Appeal Rules.
- (4) Record of Appeal was served on the respondent out of time without leave of the court being sought.
- (5) Parts of the Record of Appeal are illegible in breach of rule 13(2) of the Court of Appeal Rules.

Mr. Mwenesi, for the respondent, has attempted to explain away these defects but some of these are

serious defects which cannot be cured by merely filing a supplementary record of appeal.

In the result we agree with Mr. Wasuna that the defects except No. 3 and 5 above are incurable. The consequence of this is that the appeal is incompetent and it is accordingly struck out with costs to the respondent. The respondent will also have the costs of the Notice of Motion.

Dated and delivered at Kisumu this 25th day of November, 1999.

**R.O. KWACH**

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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