

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, LAKHA & BOSIRE, J.J.A.)

CIVIL APPEAL NO. 24 OF 1997

BETWEEN

EDITH WAGITHI CHIIRA APPELLANT

AND

REBECCA WANGUI GICHUHI RESPONDENT

(Appeal from the Ruling of the High Court of Kenya at Nairobi (Justice Githinji) dated the 26th day of April, 1996 in H.C.C.SUC.C. NO. 467 OF 1991)

RULING OF THE COURT

Hon. Martha Karua has moved the Court to strike out the appeal on the ground that the exhibits produced in the superior court have not been included in the record of appeal filed. This omission is in breach of the mandatory provisions of Rule 85(1)(f) of the Rules of this Court and renders the appeal incurably defective and incompetent.

Mr. Kamonde, however, submits that the exhibits were not available or relevant or vital. This does not supply any basis for the omission from the record as **Rule 85(1)(f)** is mandatory and makes no exception for such cases. There is no direction made under the provisions of sub-rule (3) of **Rule 85** for such documents to be excluded.

Accordingly, it follows that the appeal is incompetent and it is struck out with costs including the costs of the application filed on December 16, 1997.

Made and delivered at Nairobi this 15th day of January, 1998.

R.O. KWACH

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR