

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GICHERU, SHAH & LAKHA, J.J.A.)

CIVIL APPEAL NO. 1 OF 1998

BETWEEN

MUTUKAA KITETU MITAU.....APPELLANT

AND

MARY MITAU.....RESPONDENT

**(Appeal from the judgment of the High Court of Kenya at
Machakos (Honourable Mr. Justice John W. Mwera) dated the
2nd day of October, 1997**

in

H.C.C.A. NO. 89 OF 1991)

JUDGMENT OF THE COURT

Both counsel have agreed that this appeal be allowed with no order as to costs so that the substantive hearing may proceed on merits in the magistrate's court. We agree. The orders of this court therefore are that this appeal be and is hereby allowed with no order as to costs; that the order of costs made in the superior court against the appellant be and is hereby set aside; that the suit do proceed to hearing in the Resident Magistrate's court at Kitui on merits; that the order for costs made in the Resident Magistrate's court at Kitui be and is hereby set aside.

Dated and delivered at Nairobi this 27th day of April, 1998.

J. E. GICHERU

.....

JUDGE OF APPEAL

A. B. SHAH

.....

JUDGE OF APPEAL

A. A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR