



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL OF KENYA  
AT NAIROBI  
Civil Appeal 56 of 1995**

**FRANKLIN KITHINJI.....  
.....APPELLANT**

**AND**

**BONIFACE OTIENO.....1<sup>ST</sup>  
RESPONDENT**

**DAVID KAIGWA..... 2<sup>ND</sup>  
RESPONDENT**

**(Appeal from the Ruling and Orders of the High Court of Kenya at Nairobi (Mr. Justice Hayanga) delivered on 16<sup>th</sup> January, 1995**

**IN**

**H.C.C.C. NO. 5552 OF 1993)**

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**JUDGMENT OF THE COURT**

This an appeal from the decision of the superior court (Hayanga J) given on 16<sup>th</sup> January, 1995, by which the learned Judge dismissed an application brought by Franklin Kithinji (the appellant) seeking to strike out the defence and counterclaim filed by the respondents on 2<sup>nd</sup> December, 1993.

The appellant filed a suit against the respondents to recover damages for trespass and damage to his goods. The respondents filed a detailed defence denying the appellant’s claim together with a counterclaim. The Judge was satisfied that the defence disclosed a reasonable defence to the appellant’s claim and dismissed the appellant’s application. We have perused the defence and like the learned Judge we too are also satisfied that it disclosed a reasonable defence to the appellant’s claim.

For these reasons this appeal fails and is accordingly dismissed with costs to the respondents.

Dated and delivered at Nairobi this 5<sup>th</sup> day of June, 1998.

J. E. GICHERU

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JUDGE OF APPEAL

R. O. KWACH

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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**