



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM: GICHERU, TUNOI & PALL, J.J.A.)**  
**CIVIL APPEAL NO. 20 OF 1998**  
**BETWEEN**

**SOCIETE DE TRANSPORTS INTERNATIONAUX AU RWANDA .....APPELLANT**

**AND**

**H. H. ABDI .....RESPONDENT**

**(Appeal from a Ruling of the High Court at Nairobi (Mbito, J.) dated the 17th day of February, 1993 in**

**H.C.MISC. CIVIL APPLICATION NO. 911 OF 1991)**

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**RULING OF THE COURT**

By this application brought under rules 80 and 85 (1) and (2) of the Rules of this Court, the respondent moves the Court to strike out the record of appeal lodged in this Court on 27th February, 1998, in Civil Appeal Number 20 of 1998 on the grounds, first; that the record of appeal is not complete in that it does not incorporate full proceedings of the trial in the superior court, secondly, that several pages have been typed out of sequence, and; finally, that many pages of the record are illegible.

Mr. Nagpal, counsel for the respondent, whilst conceding that these mistakes are rampant and obvious in the record of appeal, attributed the omission to the missing court file. He averred that the respondent was not to blame since the record of appeal was prepared and filed according to the court proceedings which were supplied to him; moreover, he submitted the same were certified by the superior court.

A complete record of the proceedings is always desirable in order to enable the appellate court to consider fully the matter before it and to arrive at the truth and do justice to the parties. More often than not missing sentences, paragraphs, words etc. may obscure, or conceal vital issues necessary for determination of an appeal.

We must confess that it has been rather difficult for us to peruse the record of appeal because many of its pages are blurred and illegible. This offends rule 13 of the Rules. Throwing blame on to the superior court will not do since, primarily, the preparation of the record of appeal in civil matters lies squarely on the intending appellant.

We sympathise with the respondent. Its appeal has been a non starter and has been struck out on so many occasions due to one technicality or the other. No doubt the subject matter of the intended appeal is large. The proceedings have been protracted. Delay in finalising the matter is inevitable. We are,

however, mindful that rules of procedure are not framed to defeat justice, but, in the present instance injustice may be occasioned if we relied on an incomplete record.

This application must be allowed. We so order. The record of appeal lodged in this court on 27th February, 1998 is struck out. The applicant shall have the costs of this application.

**Dated and delivered at Nairobi this 9th day of October, 1998.**

**J. E. GICHERU**

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**JUDGE OF APPEAL**

**P. K. TUNOI**

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**JUDGE OF APPEAL**

**G. S. PALL**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**