



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: OMOLO, TUNOI & OWUOR, JJ.A.
CIVIL APPEAL NO. 109 OF 1998

BETWEEN

KITALE ELGON CO-OP. UNION LTD

MICHAEL F.C. KITIYO

JOHN CHEPSIGORAPPELLANTS

AND

SETH NYAWARE OMAMO

AGRICULTURAL FINANCE CORPORATIONRESPONDENTS

RULING OF THE COURT

This appeal is obviously incurably defective. The decree upon which the appeal is purportedly based was set aside by a judge of the superior court way back on the 13th May, 1991 and the parties were then directed to agree on a fresh decree. Apparently none was drawn up and agreed upon. So in effect the appeal is not against any decree. That in itself, is a fatal defect. There is also the issue whether the 2nd respondent was ever served with the notice of appeal. The 2nd respondent is a party directly affected by the appeal and the appellant was bound to serve them. But even if the appellant thought the 2nd respondent was not directly affected the appellant was obliged to seek the direction of the court under the proviso to Rule 76 (1) of the Court's Rules. We accordingly allow the application to strike out the appeal and order that the appeal be and is hereby struck out as prayed.

We award the costs of the motion to strike out to two respondents to the appeal but we make no order as to the costs of the appeal itself.

Dated and delivered at Nairobi this 7th day of December,

1998.

R. S. C. OMOLO

JUDGE OF APPEAL

P. K. TUNOI -----

JUDGE OF APPEAL

E. OWUOR

JUDGE OF APPEAL

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

DEPUTY REGISTRAR