

REPUBLIC OF KENYA

**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: AKIWUMI, TUNOI & LAKHA, J.J.A.)
CIVIL APPLICATION NO. NAI 361 OF 1996**

BETWEEN

**ISAAC NDISO MALINDA
CATHERINE N. MUTISYA
DAVID MUTUA WAMBUA APPLICANTS
AND
KENYA COMMERCIAL BANK LTD RESPONDENT**

**(Application for striking out Notice of Appeal from an
Appeal in the Ruling and Order of the High Court of
Kenya at Nairobi (Justice Bosire) dated 25th
November, 1993
in
H.C.C.C. NO. 4599 OF 1993)

RULING OF THE COURT

The present application is to strike out the notice of appeal and draft memorandum of appeal filed by the Respondent in the ground that no essential step required to be taken under our Rules has been done by the Respondent. But the Replying Affidavit filed by the Respondent shows that the matter of obtaining the record of appeal from the superior court has been pursued with some vigour and that the delay in the preparation of the record of appeal by the superior court, can not be put at the foot of the Respondent. It is true there has been some delay in this respect but this is a matter which in the peculiar circumstances of this application, is beyond the control of the Respondent. The order that therefore commands itself to us is that the application lacks merit and should be dismissed with costs to abide the appeal which we expect will be filed with alacrity as soon as the record of appeal becomes available. It is so ordered.

Dated and delivered at Nairobi this 20th day of January, 1997.

A. M. AKIWUMI

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JUDGE OF APPEAL

P. K. TUNOI

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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.