

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KWACH, TUNOI & SHAH, J.J.A.

CIVIL APPEAL NO. 2 OF 1994

BETWEEN

GITAMAIYU TRADING COMPANY LIMITED APPELLANT

AND

1. NJENGA KARUME

2. JAMES NJENGA KARUME

3. WARIARA NJENGA RESPONDENTS

4. MUMBI GICHURU

**(Appeal from the Ruling of the High Court of Kenya at
Nairobi (Justice S.E.O. Bosire) dated 16th February,**

1993

in

CIVIL CASE NO. 3499 OF 1992)

RULING OF THE COURT

This is an application under rule 80 of the Court of Appeal Rules by which the respondents seek to strike out the appeal on the ground that the record of appeal does not contain a certified copy of the order appealed against as required by rule 85(1)(h) of the Rules of this Court. This is a primary document and its exclusion renders the appeal incurably incompetent. Mr Bigogo does not dispute the fact that the order does not form part of the record of appeal. That being the case, the appeal is struck out as incompetent with costs to the respondents. The respondents will also have the costs of the motion.

Dated and delivered at Nairobi this 16th day of April, 1997.

R.O. KWACH

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

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