

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: AKIWUMI, LAKHA J.J.A. & BOSIRE AG. J.A)
CIVIL APPEAL NO. 7 OF 1995

BETWEEN

NJOROGE
MAKUMI.....A.N.D.APPELLANT
DAVID MWANGI NDUATI.....RESPONDENT

**(An appeal from the judgment and decree of the High Court
of Kenya (Hon. Mr. Justice Mango) dated 4th
September, 1991**

in
H.C.C.C. NO. 2710 OF 1989)

RULING OF THE COURT

Notwithstanding that Mr. Nganga, Counsel who is holding brief for counsel for the appellant, has applied for the adjournment of this appeal, we do not consider that there is a competent appeal before us. Firstly, at page 40 of the record there appears a documentary exhibit in a language other than English.

There is no translation thereof as required by rule 85 (1)(f) of the Rules of this Court. The provision being mandatory the defect is incurable. Moreover, the appeal was filed out of time. In the circumstances the appeal must be struck out with costs, the respondent having made an appropriate application under rule 80 of the Rules of this Court for the striking out of this appeal, which application we allow on the second of the two grounds we set out earlier.

Order accordingly.

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

A. M. AKIWUMI

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JUDGE OF APPEAL

A. A. LAKHA

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JUDGE OF APPEAL

S.E.O. BOSIRE

.....

AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR