



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT MOMBASA**

**(CORAM: KWACH, AKIWUMI & SHAH J.J.A.)**

**CIVIL APPEAL NO. 156 OF 1996**

**BETWEEN**

**JUMA MOHAMED TUWANO.....APPELLANT**

**AND**

**1. MOHAMED HAMISI MWABWAGIZO**

**2. SALIM HAMISI MWABWAGIZO**

**3. MASUDI MWACHIBUKO MWABWAGIZO**

**4. SALIM ABDULRAHIM**

**MWABWAGIZO.....RESPONDENTS**

**(Appeal from Ruling and decree of the High Court of Kenya  
at Mombasa (Wambilyangah J.) dated 13th September,  
1995**

**in**

**H.C.C.C. NO. 1 OF 1991**

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**JUDGMENT OF THE COURT**

Justice must only be done, but must manifestly be seen to be done. However weak a plaintiff's case may sound to a judge the judge cannot stop the plaintiff's case half-way through. There was evidence that the plaintiff had three more witnesses to call. Mr. Khaminwa argues that the learned judge acted improperly by terminating the proceedings after hearing only one witness (the Plaintiff) who was not even cross-examined.

Order XVII rule 4 of the Civil Procedure Rules requires a judge to see to it that evidence of witnesses in attendance is taken under his personal direction and superintendence. He has to take down the evidence of each witness in writing. He cannot tell the plaintiff "I do not like your case, I will hear you no more", when the plaintiff makes it clear that he still has three witness to call.

Mrs. Ndegwa for the respondent agrees that the plaintiff was not cross-examined and that the plaintiff was not allowed to call his witness.

A judge can only decide a suit after hearing all parties properly. In all the circumstances we allow this appeal with costs and order that the suit in the superior court be heard, by another judge, de novo.

**Dated and delivered at Nairobi this 9th day of May, 1997.**

**R.O. KWACH**

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**JUDGE OF APPEAL**

**A.M. AKIWUMI**

.....

**JUDGE OF APPEAL**

**A.B. SHAH**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**