



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, LAKHA, JJ.A. & BOSIRE, AG.J.A.)

CIVIL APPEAL NO. 109 OF 1997

BETWEEN

BENSON KAMAU KAREITHI.....APPELLANT

AND

HENRY GATHU THANDE.....RESPONDENT

(Appeal from the Order of the High Court of Kenya at Nairobi
(Justice Shield) dated 30th May, 1986

in

H.C.C.C. NO. 74 OF 1979)

JUDGMENT OF THE COURT

This is an appeal against the decision of the superior court (Shields, J.) whereby he dismissed an application made on behalf of the appellant to set aside a judgment entered in terms of an award filed and read in Court.

The application was supported by an affidavit of the appellant's then advocate and based solely on the ground of non-service. The learned Judge was satisfied that there was service which when shown to Mr. Kinuthia for the appellant he conceded and, in our view properly, that there was service. This concession disposes of the appeal. It follows that the appeal fails. We may add that we seised of the attack on the judgment entered by Aganyanya , J. against which there is no notice of appeal or any appeal.

For these reason the appeal is dismissed with costs.

Dated and delivered at Nairobi this 6th day of November, 1997.

R.O. KWACH

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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