



**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, OMOLO & LAKHA, JJ.A.)
CIVIL APPEAL NO. 121 OF 1992**

BETWEEN

REPUBLIC.....APPELLANT

AND

THE DISTRICT COMMISSIONER MACHAKOS.....RESPONDENT

**(Appeal from the judgment of the High Court of Kenya at
Nairobi (Bosire & Mwera, JJ.) dated 4th June, 1992**

in

H.C. MISC. CAUSE NO. 117 OF 1986)

RULING OF THE COURT

In this application the applicant seeks to have the appellant's appeal struck out for being incompetent for the reason that the record of the said appeal does not contain a certified copy of the decree appealed against. Mr. Mokaya for the appellant concedes this application but asks that he be allowed to withdraw the appellant's appeal. It is patently obvious that the record of the appellant's appeal does not contain a certified copy of the decree appealed against. In the circumstances the said appeal is incompetent as it offends the provisions of rule 85(1)(h) of the Rules of this Court and there is therefore nothing to be withdrawn. In the result we allow the applicant's application and strike out the appellant's appeal with costs to the applicant Isaac Matheka Mutua together with the costs of this application.

Dated and delivered at Nairobi this 21st day of May, 1996.

J.E. GICHERU

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JUDGE OF APPEAL

R.S.C. OMOLO

.....

JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR