



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: GACHUHI, OMOLO & LAKHA, JJ.A.)

CIVIL APPEAL NO. 83 OF 1995

BETWEEN

**BAMBURI PORTLAND CEMENT CO. LTD.....
.....APPELLANT**

AND

**IMRANALI CHANDBHAI ABDULHUSSEIN.....
.....RESPONDENT**

**(Appeal from a judgment and decree of the High Court of Kenya at Mombasa (Justice
Wambilyangah) dated 7th December, 1994**

IN

H.C.C.C. NO. 749 OF 1992)

RULING OF THE COURT

Ruling respondent through his advocate, Dr. Khaminwa, complained at the start of the hearing of the appeal that the record of appeal contains illegible pages which rendered the record of appeal incompetent. He relied on Rule 13 of the Rules of this Court.

Mr. Khanna for the appellant replied that the plaintiff produced the original exhibits and requested the Court to allow him to withdraw them and replaced them with photocopies as he intended to use them elsewhere.

It was then when Dr. Khaminwa applied to the Court for adjournment to enable him to obtain these exhibits from his clients and then file the supplementary record.

Although Mr. Khanna stated that he will not refer to these exhibits and that if he does not refer to them, it will not be open to Dr. Khaminwa to refer to them, we feel that for the purpose of putting the record straight the adjournment should be granted but Dr. Khaminwa having known of the position since his firm was served with the record of appeal in April 1994, should be condemned to costs for the adjournment is granted on the following terms:-

1. The Notice of Motion filed in Court yesterday for striking out the appeal which Dr. Khaminwa purported to withdraw is hereby dismissed with costs.
2. Costs of adjournment assessed at Kshs.5,000/= is awarded tot he appellant.
3. Supplementary record if any, be filed within 45 days from to-day.
4. The said costs to be paid within 14 days from to-day failing which execution to issue.
5. This appeal to be listed for hearing during the next session in Mombasa.

Dated and delivered at Mombasa this 26th day of July, 1995

J. M. GACHUHI

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

A. A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR