



**IN THE COURT OF APPEAL**  
**AT NAIROBI**

**(CORAM: GICHERU, AKIWUMI & LAKHA, JJ.A.)**

**CIVIL APPEAL NO. 92 OF 1989**

**BETWEEN**

**CORNELIUS K. BIRGEN .....APPELLANT**

**AND**

**KIPRONO A. MASAI .....RESPONDENT**

**(Appeal from a Judgment and Decree of the High Court of**

**Kenya at Nairobi (Lady Justice Effie Awuor) dated**

**13th June, 1988**

**in**

**H.C.C.C. NO. 402 OF 1985)**

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**RULING OF THE COURT**

The judgment appealed against decided that the superior court had no jurisdiction to entertain the appeal filed before it. It did not in any way seek conclusively to determine the rights of the parties and did not give rise to a decree within the meaning of s.2. of the Civil Procedure Act. At the best it gave rise to an order. But no appeal lies under s.75 (2) of the Civil Procedure Act from an order in appeal by the superior court.

Accordingly no appeal lies and this appeal is struck out with costs to the Respondent.

**Dated and delivered at Nairobi this 5th day of October, 1995.**

**J. E. GICHERU**

**JUDGE OF APPEAL**

**A. M. AKIWUMI**

**JUDGE OF APPEAL**

**A. A. LAKHA**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**