



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(Coram: Nyarangi, Masime Kwach JJA & Ag JA)**

**CIVIL APPEAL NO 90 OF 1987**

**BETWEEN**

**IMBUSI LUVONGA.....APPELLANT**

**AND**

**PAMBA LUVONGA.....RESPONDENT**

*(Appeal from the High Court at Kakamega, Aganyanya J)*

**JUDGMNET**

December 2, 1988, **Nyarangi, Masime JJA & Kwach Ag JA** delivered the following Judgment.

The material facts are as follows:

The appellant, an elder brother of the respondent, was the defendant way back in June 1960 in a land case number 81 of 1960 of the then Lurambi African Court.

The suit was taken over, heard and determined by the third class magistrate, Butali District Court who found for Imbusi Luvonga, the appellant.

On May 13, 1971, the Resident Magistrate Kakamega dismissed the appeal by Pamba Luvonga against the decision of the District Magistrate, Butali.

Despite the judgment of the Resident Magistrate upholding the decision of the lower court, Imbusi Luvonga appealed to the High Court for the reasons *inter alia* that the Resident Magistrate misdirected himself in that he did not consider that the land in dispute had been the subject-matter of court proceedings before the Butali Court and that the Resident Magistrate overlooked the documentary evidence.

Therefore, in the event, the only point that we have to decide is whether another appeal lies to this Court.

Section 71 A(1) and (2) of the Civil Procedure Act provides:

“71A(1) Except where otherwise expressly provided in this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court from a decree passed by a subordinate court of the first class on an appeal from a subordinate court of the third class, on a question of law only.

(2)An appeal under this section shall be final.”

The appeal to the High Court was from a decree passed by the subordinate court of the Resident Magistrate on an appeal from the District Magistrate of the third class.

The appeal was on a question of law only; the Resident Magistrate so held. That appeal was in law final.

That conclusion is sufficient to dispose of the present appeal as being incompetent. The appeal is struck out with costs. That then is the order of the Court.

**Dated and delivered at kisumu this 2nd day of December, 1988**

**J.O. NYARANGI**

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**JUDGE OF APPEAL**

**J.R.O. MASIME**

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**JUDGE OF APPEAL**

**R.O. KWACH**

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**Ag. JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**