



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CIVIL APPEAL NO. 331 OF 2002**

**NJOROGE NGUYAI ..... APPELLANT**

**AND**

**NAOMI WANJIRU KAMANDA ..... 1<sup>ST</sup> RESPONDENT**

**VIGINIA MUKUHI KAMANDA ..... 2<sup>ND</sup> RESPONDENT**

**SERAH MUTHONI KAMANDA ..... 3<sup>RD</sup> RESPONDENT**

***(Appeal from the decision of the High Court of Kenya at Nairobi***

***(Owuor, J.) dated 29<sup>th</sup> May, 1998***

***in***

***H.C.C.C. NO. 40 OF 1993)***

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

This is an appeal from the judgment of **Owuor, J.** (as she then was) delivered in Nairobi on 29<sup>th</sup> May, 1998. When the appeal came up for hearing before us on 21<sup>st</sup> October, 2008, Mr. S.M.W. Kinuthia appeared for the appellant, while Miss. L.N. Waigera appeared for the respondent.

In his submission, Mr. Kinuthia pointed out that the learned Judge dealt with the application dated 20<sup>th</sup> December, 1990 instead of that dated 4<sup>th</sup> February, 1992. Mr. Kinuthia asked us to remit the matter to the superior court for hearing.

On her part, Miss Waigera conceded to Mr. Kinuthia's submission saying that she would have no problem if the matter were to be taken back to the superior court.

We have perused the record of appeal and we agree with both Mr. Kinuthia and Miss Waigera that the matter be taken back to the superior court for hearing. It is indeed true that the learned Judge dealt with the application dated 20<sup>th</sup> December, 1990 which application had been dealt with and finalized by the Resident Magistrate at Naivasha. What was before the learned Judge was the appeal from the decision in the application dated 4<sup>th</sup> February, 1992 and filed on 10<sup>th</sup> February, 1992. She, unfortunately,

overlooked that application hence Mr. Kinuthia is quite right in his submissions.

In the circumstances this appeal is allowed and the matter is remitted to the superior court for hearing of the ***Civil Appeal No. 40 of 1993.***

As none of the parties can be blamed for the error by the superior court, we make no orders as to the costs of this appeal.

***Dated and delivered at Nairobi this 24<sup>th</sup> day of October, 2008.***

***E.O. O’KUBASU***

.....

***JUDGE OF APPEAL***

***J.W. ONYANGO OTIENO***

.....

***JUDGE OF APPEAL***

***D.K.S. AGANYANYA***

.....

***JUDGE OF APPEAL***

*I certify that this is a*

*true copy of the original.*

**DEPUTY REGISTRAR**