

REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT KISUMU

CIVIL APPEAL APPLI 157 OF 2008

KENYA COMMERCIAL FINANCE CO. LTD.....APPLICANT/RESPONDENT

AND

RICHARD AKWESERA ONDITI.....RESPONDENT/APPELLANT

(Application to strike out Civil Appeal No. 157 of 2008 being appeal against the judgment and decree of the High Court of Kenya at Kakamega (Tanui, J) dated 18th September, 2001

In

H.C.C.C. NO. 65 OF 1993)

RULING OF THE COURT

Before us is a motion brought under *rule 80* of the Court of Appeal Rules for an order striking out the record of appeal on, amongst other grounds, that the record of appeal does not include some of the exhibits produced before the trial court. The applicant is *KENYA COMMERCIAL FINANCE COMPANY LIMITED*, the respondent in the appeal. The respondent in the application who is the appellant in the appeal is *RICHARD AKWESERA ONDITI*. As the appellant concedes that some of the documentary exhibits which were produced before the trial court are not part of the record of appeal, and those documents may not be brought in by way of a supplementary record of appeal, in view of the provisions of *rule 85(2A)* of this Court's Rules, it follows that this record of appeal is incurably defective. In the circumstances the motion dated 18th August, 2008 and filed on the same date is allowed with the result that this appeal is struck out as being incompetent. We however make no order as to costs of the struck out appeal and the motion.

DATED and DELIVERED at KISUMU this 5th day of DECEMBER, 2008.

R.S.C. OMOLO

.....

JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

J.W. ONYANGO OTIENO

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR