



**IN THE COURT OF APPEAL OF KENYA**

**AT ELDORET**

**CIVIL APPEAL 174 OF 2002**

**AGRICULTURAL FINANCE CORPORATION.....  
.....APPELLANT**

**AND**

**MARK J.S. KISEMBE**

**RONALD YATICH CHELAGAT**

**WYCLIFFE TABANI WEPUKHULU .....  
RESPONDENT**

*(Appeal from a ruling of the High Court of Kenya at Kitale (Etyang, J.) dated 30<sup>th</sup> November, 2001*

**in**

**CIVIL CASE NO. 15 OF 2001)**

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**JUDGMENT OF THE COURT**

The hearing of this appeal was deferred on 17<sup>th</sup> February, 2005 to await the decision of this Court on a related appeal between the same parties on the same subject matter. That was **Civil Appeal No. 92/02**. It is confirmed by the parties that judgment in that appeal was delivered on 29<sup>th</sup> April, 2005 and it largely determined the issue raised in this appeal. We are also informed that the suit that originated this appeal, i.e **Kitale HCCC 15/01** was withdrawn with costs to all the defendants in that suit.

The respondents herein are not averse to an order, which the appellant seeks, that this appeal be allowed. The only issue for our decision is the order for costs. We have considered all the circumstances surrounding the dispute and we are inclined to make the order that the appeal be and is hereby allowed. Each party shall bear its own costs of the appeal.

**Dated at Eldoret this 22<sup>nd</sup> day of February, 2006.**

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**P.N. WAKI**

.....

**JUDGE OF APPEAL**

**J.W. ONYANGO OTIENO**

.....

**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR