



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

CIVIL APPEAL (APPLI) 26 OF 2006

GAUDENSIA ATIENO AMIMO.....APPLICANT/1ST RESPONDENT

AND

**AKAMBA PUBLIC ROAD SERVICES LIMITED1ST
RESPONDENT/APPELLANT**

SHADRACK KAIGAI2ND RESPONDENT

DANIEL KAIGAI3RD RESPONDENT

*(An application to strike out record of appeal from the judgment of the High Court of
Kenya at Kisumu (Mr. Justice Mohammed Warsame) dated 24th November, 2005*

in

KISUMU H.C.C. NO. 173 OF 2001)

RULING OF THE COURT

What is before us is an application made by the 1st respondent in the main appeal under **rule 80** of the Rules of this Court for striking out the record of appeal for two reasons: firstly, that the purported decree contained in the record of appeal is not signed by the Deputy Registrar and that it relates to a judgment delivered on 8th February, 2005 whilst the judgment the subject matter of the appeal was delivered on 24th November, 2005; secondly, that the record of appeal contains various illegible copies of primary documents. We have examined the original record of the superior court and it is conceded by Mr. Menezes for the appellant/respondent, that the original decree is not signed and is in fact blank and unsigned. The Deputy Registrar's Certification of it in that form is therefore of no consequence. On this ground alone, we think Mr. Otieno's submission is valid and we grant the application as sought.

Accordingly, we order that the record of appeal filed in this Court on 8th February, 2006 be and is hereby struck out with costs to the first and second respondents in the main appeal.

Dated and delivered at Kisumu this 23rd day of June, 2006.

P. K. TUNOI

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JUDGE OF APPEAL

E. O. O'KUBASU

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JUDGE OF APPEAL

P. N. WAKI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR