



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MOMBASA
Civil Appeal (Appli) 111 of 2005

EDWARD MAINA NJANGA T/A

MAINA NJANGA & CO. ADVOCATES APPELLANT

AND

NATIONAL BANK OF KENYA LTD RESPONDENT

*(Application to strike out the record of appeal from a ruling of the High Court of Kenya at Mombasa
(Maraga J.) dated 4th April 2005*

in

H.C.MISC. A. NO.583 OF 2003)

RULING OF THE COURT

There is really no valid reason put before us for striking out the appeal. The order included in the record is certified and it was drawn, signed and certified by a Deputy Registrar of the superior court.

It is now said the Deputy Registrar in approving the order, did not comply with **Order 20 Rule 7** of the Civil Procedure Rules but if that did happen, the proper place to complain is the superior court itself which drew up the order. All that **Rule 85(l)(h)** requires is that there be in the record a certified copy of the order; it (Rule) does not say that the certified order must have been drawn up in accordance with **Order 20 Rule 7**. The drawing up of an order in the superior court is really not an essential step in the process of appeal; an essential step in the process of an appeal would be, for example, failure to file the notice of appeal within time or filing an appeal without a certified copy of the order. But if it is being alleged that the order was not properly drawn up then the proper place to raise that complaint is to go to the superior court. We accordingly refuse to strike out the appeal and order that the notice of motion dated **31st May 2005** and lodged in Court on **2nd June 2005**, be and is hereby dismissed but we make no order as to the costs thereof as the respondent agrees they failed to comply with the process of drawing up

an order. Those are our orders.

Dated at Mombasa this 27th day of July, 2006.

R.S.C. OMOLO

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

W.S. DEVERELL

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR