



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAKURU**  
**(CORAM: TUNOI, BOSIRE & OWUOR, J.J.A.)**  
**CIVIL APPEAL NO. 53 OF 2001**  
**BETWEEN**

**BAHATI WOMEN COMPANY LIMITED ..... APPELLANT**

**AND**

**1. JOSEPH MATHENGE MUTURI**

**2. DAVID MUCHAI NG'ANG'A**

**3. LUCY WANJIRU MURATHA**

**4. PETER O. OBWANG**

**5. LUCY WAMBUI GACHAU**

**6. EMILY NYAMBURA WACHANIA**

**7. VERONICA NJERI**

**8. JACINTA NJERI MWANGI .....RESPONDENTS**

**(Appeal from the ruling of the High Court of Kenya at Nakuru**

**(Rimita, J.) dated the 8th day of November, 2000**

**in**

**H.C.C.C. NO. 375 OF 2000)**

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**RULING OF THE COURT**

Mr. Mbeche, counsel for the respondents in this application concedes, quite properly so, that the notice of appeal included in the record of appeal was served out of time without leave, and also that the order appealed from which is part of the record does not tally with the ruling of the superior court appealed against. That being the case and considering that the order is a primary document and cannot be amended, it follows that this appeal is incurably defective.

In the result, we allow the respondents' application dated 24th April, 2001, with costs, strike out both the notice of appeal and the appeal as incompetent. We award the costs of the appeal to the respondents to be taxed if not agreed upon.

**Dated and delivered this 28th day of February, 2003.**

**P. K. TUNOI**

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**JUDGE OF APPEAL**

**S. E. O. BOSIRE**

.....

**JUDGE OF APPEAL**

**E. OWUOR**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

