

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT KISUMU
(CORAM: KWACH, LAKHA & OWUOR, J.J.A.)

CIVIL APPEAL NO. 234 OF 1999
BETWEEN

EVANS GUNDOAPPELLANT

AND

NAFTALI SULERESPONDENT

(Appeal from the Judgment and Decree of the High Court of Kenya at Kisumu (Justice Wambilyangah) dated the 23rd day of February, 1999

in

H.C.C.C. NO. 251 OF 1998)

JUDGMENT OF THE COURT

Having briefly heard the advocates for the parties, we are satisfied that the Court granted relief and gave judgment on the basis of a pleading which did not pray for the same.

This amounted to no judgment - relief on the basis of matters not pleaded. The appeal is, therefore, allowed with costs, the decree of the superior court is set aside and the case is puremitted to the superior court for a new trial on a priority basis before another judge rsuant to rule 31 of the Rules of this Court.

Dated and delivered at Kisumu this 13th day of March, 2002.

R.O. KWACH

.....

JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

E. OWUOR

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR