

**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, OMOLO & LAKHA, J.J.A.)
CIVIL APPEAL NO. 97 OF 2001**

BETWEEN

MANSUR JIWANI (Sued wrongly as T/a COMPUTER CITY APPELLANT

AND

OVIDIAN ADVERTISING & DESIGN LTD. RESPONDENT

**(Appeal from the Ruling and Order of the High Court of Kenya
at Milimani Commercial Courts (Justice Moiwo Ole Keiwua)
dated 15th February, 1999
in
H.C.C.C. NO. 459 OF 1997)

RULING OF THE COURT

Mr. Ngunjiri, for the appellant, has complained that parts of the affidavit should have been struck out. But this matter was considered and canvassed before Hayanga, J. who refused to strike the same out in a ruling which has not been included in the record. Mr. Ngunjiri did not appeal against that ruling: no notice of appeal was given with regard to that and freely argued although already adjudicated upon. They were matters not open to him and the ruling of Hayanga, J. should have been included as it was a primary document. Not having been included it renders this record of appeal incompetent. Accordingly, the appeal is struck out with costs to the respondent.

Dated and delivered at Nairobi this 6th day of May, 2002.

J.E. GICHERU

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JUDGE OF APPEAL

R.S.C. OMOLO

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JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR