

**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: AKIWUMI, SHAH & KEIWUA, J.J.A
CIVIL APPEAL NO. 26 OF 2000**

BETWEEN

FARIDA KIMOTHO.....APPELLANT

AND

ERNEST MAINA.....RESPONDENT

**(Appeal from the Ruling and orders of the High Court of
Kenya at Nairobi (Ang'awa J) dated 12th October,
1998**

in

H.C.C.C. NO. 3720 OF 1995)

JUDGMENT OF THE COURT

This appeal arises as a result of the refusal by the learned Judge (Ang'awa, J) to grant a one day adjournment to the appellant when his counsel applied for such adjournment. The suit in the superior court was listed for hearing on 12th and 13th days of October, 1998. The advocate for the appellant, in the circumstances he was facing, made a reasonable request to the effect that the hearing of his client's suit do proceed the next day. The learned Judge refused to grant the adjournment without assigning any reason or reasons for her such refusal. We are of the view that the learned Judge was rather harsh in refusing the adjournment.

The proceedings as recorded by the learned Judge leave a lot to be desired. Some portions of the proceedings make no sense.

Mr. Ngare for the respondent has, in our view, quite properly conceded that he cannot really oppose the appeal.

In these circumstances this appeal is allowed with costs.

The order of dismissal of suit for "lack of prosecution" is set aside. It is further ordered that the suit in the High Court be heard by any Judge. A copy of this judgment is directed to be sent to Ang'awa J.

Dated and delivered at Nairobi this 24th day of January, 2001.

A.M. AKIWUMI

.....
JUDGE OF APPEAL

A.B. SHAH

.....
JUDGE OF APPEAL

M. KEIWUA

.....
JUDGE OF APPEAL

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