

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: GICHERU, AKIWUMI & TUNOI, J.J.A.)

CIVIL APPEAL NO. 33 OF 1999

BETWEEN

CRESCENT CONSTRUCTION CO. LTD APPELLANT

AND

DELPHIS BANK LIMITED RESPONDENT

**Appeal from a Ruling and Order of the High Court of Kenya
at Nairobi, Milimani Commercial Court (Justice
Keiwua) dated 15th day of December, 1998**

in

H.C.C.C. NO. 4082 OF 1994)

RULING OF THE COURT

The second page of the Chamber Summons filed by the Respondent to strike out the Appellant's suit in the superior court, is part of the pleadings in the suit in that court and as such, it is not one of those documents which, when omitted from the record of appeal as in this case, may under Rule 85(2A), with leave of this court, be included in a supplementary record of appeal. The documents referred to in Rule 85(2A) are only those that fall under paragraphs (a), (b), (e), (i), or (k) of Rule 85(1) which does not include pleadings that are referred to in paragraph (c) of Rule 85(1).

In the result, the present appeal is incompetent no matter whether the Respondent does not object just to the filling of a supplementary record of appeal to incorporate the missing page of the Chamber Summons. The appeal is hereby struck out, but obviously with no costs for the Respondent.

Dated and delivered at Nairobi this 19th day of February, 2001.

J. E. GICHERU

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JUDGE OF APPEAL

A. M. AKIWUMI

.....
JUDGE OF APPEAL

P. K. TUNOI

.....
JUDGE OF APPEAL

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