



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: GICHERU, TUNOI & LAKHA, J.J.A.
CIVIL APPEAL NO. 90 OF 1999**

**BETWEEN
NICHOLAS MULAYAAPPELLANT
AND
JOEL KISIA
INTER FREIGHT (K) LIMITEDRESPONDENTS**

**(An appeal from judgment of the High Court of Kenya at
Kakamega (Tanui J) dated 19th November, 1998
in
KAK.H.C.C.C. NO. 178 OF 1991)**

RULING OF THE COURT

Mr Otieno for the appellant concedes and, rightly so, that several pages in his record of appeal are not legible in breach of **rule 13 of the Rules of the Court** . More importantly, however, the record does not include the application or supporting affidavit for the amendment of a pleading in breach of **rule 85 (1)(c)** of the rules. This omission is incurable and renders the appeal incompetent. It is accordingly struck out but with no order as to costs.

Dated and delivered at Kisumu this 21st day of March, 2001.

J. E. GICHERU

**JUDGE OF APPEAL
P. K. TUNOI**

**JUDGE OF APPEAL
A. A. LAKHA**

JUDGE OF APPEAL

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