

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
(CORAM: TUNOI, LAKHA & O'KUBASU JJA)
CIVIL APPEAL NO. 196 OF 2000
BETWEEN

1. HERBERT ASAVA)
2. JACOB MASINDE NEYOLE)
3. HEZRON ATSAYA)
4. EZEKIEL WANYONYI)
5. BETHWELL ALENGA)..... APPELLANTS
6. JAPHETH NAGAYA)
7. MOSES MULELE)
8. HESBON O. WENDO)
9. VICTOR SHITOSHE)
10. TOM AGWEYU)
11. ALICE MASILWA)

AND

1. TIMOTHY BILINDI)
2. ALEXANDER MUDEKI MASIKA)
3. JESTIMORE WEBI)..... RESPONDENT(JEREMISA H LUSWETI)

**(Appeal from the ruling and order of the High Court of
Kenya at Busia (Mr. Justice G.P. Mbiti) dated 29th
March, 2000 and delivered on 3rd May, 2000**

in

H.C.MISC.APPL. NO. 17 OF 1998)

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JUDGMENT OF THE COURT

Mr. Wanga for the appellants has contended that the judgment appealed against is a nullity having been delivered by a Senior Resident Magistrate in breach of Order xx r.2(2) of the Civil Procedure Rules and not authorised by the provisions of Order 48 of the Civil Procedure Rules. Mr. Anzia for respondents agree accordingly the appeal is allowed with costs, the judgment appealed from is set aside and the application in the superior court dated 19th March, 1999 is dismissed with costs.

Made at Kisumu this 20th day of November, 2001.

P.K. TUNOI

JUDGE OF APPEAL

A.A. LAKHA

JUDGE OF APPEAL

E.O. O'KUBASU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR