



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: KWACH, AKIWUMI & LAKHA, JJ.A.
CIVIL APPEAL NO. 211 OF 1998
BETWEEN**

MOHAMMED YAKUB & MOHAMMED YUSUF

**T/A YASSER BUTCHERY APPELLANTS
AND
MRS BADUR NASA SAIDI NASHEAN ROBERT M. CHEGE**

T/A COVENANT AUCTIONEERSRESPONDENTS

(Appeal from a ruling of the High Court of Kenya at Nairobi (O'Kubasu J) dated 31st May, 1996

in

**H.C.C.C. NO. 1945 OF 1995)

RULING OF THE COURT

When an appeal has been dismissed under Rule 99 (1) for failure to appear, the appeal may be restored if in this case, it can be shown that the advocate on record Mrs Rodrigues, was prevented by sufficient cause from appearing. The rather hollow affidavit sworn to by her in this regard, does not constitute sufficient cause. It would have been different if there had been another affidavit by her clerk who as deponed in her affidavit, had failed to instruct the advocate leading Mrs Rodrigues who was busy elsewhere, to be in court.

This is not the sort of case that we think the omission of the advocate on record should not be visited upon her client. In the result, the application to restore the applicants' appeal is hereby dismissed with costs for the Respondents.

Dated and delivered at Nairobi this 29th November, 2000.

R. O. KWACH

JUDGE OF APPEAL

A. M. AKIWUMI

JUDGE OF APPEAL

A. A. LAKHA

JUDGE OF APPEAL

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

DEPUTY REGISTRAR