



Case Number:	Civil Appeal Appli 157 of 2008
Date Delivered:	05 Dec 2008
Case Class:	Civil
Court:	Court of Appeal at Kisumu
Case Action:	Ruling
Judge:	Riaga Samuel Cornelius Omolo, Samuel Elikana Ondari Bosire, John walter Onyango Otieno
Citation:	Kenya Commercial Finance Co. Ltd v Richard Akwesera Onditi [2008] eKLR
Advocates:	-
Case Summary:	[Ruling] Civil Practice and Procedure - appeal - striking out of appeal - application to strike out appeal - ground: record of appeal did not include some exhibits produced before the trial court - whether the omitted exhibits could be brought on record by way of a supplementary record of appeal - whether the record of appeal was incurably defective - Court of Appeal Rules rule 80, 85(2A)
Court Division:	Civil
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	H.C.C.C. NO. 65 OF 1993
Case Outcome:	Dismissed
History County:	Kakamega
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-

Sum Awarded:	-
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**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT KISUMU**

**CIVIL APPEAL APPLI 157 OF 2008**

**KENYA COMMERCIAL FINANCE CO. LTD.....APPLICANT/RESPONDENT**

**AND**

**RICHARD AKWESERA ONDITI.....RESPONDENT/APPELLANT**

***(Application to strike out Civil Appeal No. 157 of 2008 being appeal against the judgment and decree of the High Court of Kenya at Kakamega (Tanui, J) dated 18<sup>th</sup> September, 2001***

**In**

**H.C.C.C. NO. 65 OF 1993)**

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**RULING OF THE COURT**

Before us is a motion brought under *rule 80* of the Court of Appeal Rules for an order striking out the record of appeal on, amongst other grounds, that the record of appeal does not include some of the exhibits produced before the trial court. The applicant is *KENYA COMMERCIAL FINANCE COMPANY LIMITED*, the respondent in the appeal. The respondent in the application who is the appellant in the appeal is *RICHARD AKWESERA ONDITI*. As the appellant concedes that some of the documentary exhibits which were produced before the trial court are not part of the record of appeal, and those documents may not be brought in by way of a supplementary record of appeal, in view of the provisions of *rule 85(2A)* of this Court's Rules, it follows that this record of appeal is incurably defective. In the circumstances the motion dated 18<sup>th</sup> August, 2008 and filed on the same date is allowed with the result that this appeal is struck out as being incompetent. We however make no order as to costs of the struck out appeal and the motion.

***DATED and DELIVERED at KISUMU this 5<sup>th</sup> day of DECEMBER, 2008.***

***R.S.C. OMOLO***

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***JUDGE OF APPEAL***

***S.E.O. BOSIRE***

.....

***JUDGE OF APPEAL***

***J.W. ONYANGO OTIENO***

.....  
**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**



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