



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT KISUMU  
(CORAM: KWACH, OMOLO & LAKHA, JJ.A.)  
CIVIL APPEAL NO. 291 OF 1996

BETWEEN

DIAMOND TRUST OF (K) LTD. ....APPLICANT  
AND  
PETER ODERO OOR  
MAQ'S MOTOR SALES LTD. ....RESPONDENTS

(Appeal from the ruling of the High Court of Kenya at Kisumu  
(Justice Wambiliangah) dated 30th January, 1996  
in  
H.C.C.C. NO. 367 OF 1995)  
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R U L I N G

This is an application to strike out the Notice of Appeal on the ground that the Notice was never served upon the Respondent within 7 days from the date of the filing. This is deponed to in the affidavit in support. There is no affidavit in Reply or in opposition. There is a breach of mandatory provision being Rule 76 of the Rules of this Court. Accordingly, the Notice of Appeal filed on 31st January, 1996 is hereby struck out. The parties to this application were wrongly described and in the circumstances there will be no order as to costs.

Made at Kisumu this 22nd day of November, 1996.

**R.O. KWACH**

.....

**JUDGE OF APPEAL**

**R.S.C. OMOLO**

.....

**JUDGE OF APPEAL**

**A.A. LAKHA**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

