**Magana Holdings Ltd v Mungai**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 3 December 1999

**Case Number:** 143/96

**Before:** Gicheru, Omolo and Shah JJA

**Sourced by:** LawAfrica

**Summarised by:** W Amoko

*[1] Practice and procedure – Court of Appeal – Record of appeal – Contents – Orders – Form of the*

*orders – Whether an order should be drawn up in the same manner as a decree – Consequences of the*

*record of appeal containing an order not drawn up in the same manner as a decree – Court of Appeal*

*Rules – Rule 851(*h*) and Order XX, Rule 7(1) and (6) of the Civil Procedure Rules – Section 89 – Civil*

*Procedure Act (Chapter 21).*

**Editor’s Summary**

The Respondent applied to have the appeal struck out as the order which was appealed against and the order granting leave to appeal, both which were included in the record of appeal, were fatally and totally defective as they were not drawn in the same format as that of a decree.

**Held** – Rule 85(1)(*h*) of the Court of Appeal Rules does not require an order to be drawn in the same manner as a decree. As the Respondent’s advocate failed to respond to the Appellant’s advocates’ request to approve the draft orders sent to him and the High Court’s registry approved and sealed the said orders in terms of Order XX, Rule 7(1) of the Civil Procedure Rules as read with sub-rule (6) thereof, it was not open to the Respondent to argue that the orders as drawn did not comply with procedural requirements. Under the forms prescribed in the various Schedules to the Civil Procedure Rules, the format for drawing a decree differs from that of an order. By section 2 of the Civil Procedure Act (Chapter 21), an order is different from a decree and section 89 of the Civil Procedure Act mandates that rules of procedure shall be followed so far as applicable in any court of civil jurisdiction. It is not required that an order should be drawn up in like manner as a decree*. Suryakant Bhagwanji Raja Shah v Aperit*

*Investment SA* overruled*.*

**Case referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Shah v Aperit Investment SA* [1999] LLR 1014 (CAK) – **O**