**Shah v Aperit Investments SA**

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

**Date of Ruling:** 18 November 1999

**Case Number:** 143/99

**Before:** Gicheru, Akiwumi and Owuor Jja

**Sourced by:** LawAfrica

**Summarised by:** W Amoko

*[1] Practice and procedure – Court of Appeal – Record of appeal – Contents – Distinction between*

*primary documents and secondary documents – Consequences of failure to include a primary document like an order – Rules 80 and 85(1) – Court of Appeal Rules. [2] Practice and procedure – Court of Appeal – Record of appeal – Contents – Distinction between primary documents and secondary documents – Whether documents included in an affidavit included in the record of appeal had to have certified translations thereof – Consequences of failure to include certified copies of a document in a language other than English – Rule 85(1)*(f) *– Court of Appeal Rules. [3] 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 – Order 20, Rules 6(1) and 7 – Civil Procedure Rules.*

**Editor’s Summary**

In this case the Court, of its own motion struck out the Appeal, as it was incurably incompetent for three different reasons: There was an ambiguity in the order appealed from, as the date mentioned therein differed from the date on which the ruling was in fact appealled from. An ambiguity in a primary document like an order is fatal. *Anjumani v Ali* [1998] LLR 868 (CAK) applied. The formal order included in the record of appeal was incurably defective as it was not prepared in a like manner as a decree as required by Order 20, Rules 6(1) and 7 of the Civil Procedure Rules. Two share certificates which formed part of the pleadings in the application before the Superior Court were in Spanish and contrary to rule 85(1)(*f*) of the Court of Appeal rules. There were no certified translations of the said certificates and hence the record was fatally defective. Appeal struck out.

**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)

*Anjumani v Ali* [1998] LLR 868 (CAK) – **AP**