

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KWACH, J.A. (IN CHAMBERS)

CIVIL APPEAL APPLICATION NO. 57 OF 1997

BETWEEN

PETER NJAU KAIRUAPPELLANT

AND

STEPHEN NDUNG'U NJENGARESPONDENT

(Appeal from the Judgment and Decree of the High Court of Kenya

(Justice G. P. Mbiti) dated 22nd day of November, 1996

in

H.C.C.C. NO. 2859 OF 1995)

RULING

This is an application under rule 44 of the Court of Appeal Rules for leave to amend the record of appeal by joining one Njiriri Ndung'u as a second respondent in the appeal. The reason for this is apparently that Stephen Ndungu Njenga, the respondent in the appeal, has since the institution of the appeal transferred the suit premises to Njiriri Ndungu. The application has not been served on Njiriri Ndungu and so he has not been afforded an opportunity of being heard. But that is neither here nor there.

As Mrs. Muhuhu, for the respondent, correctly pointed out, Njiriri Ndungu is really a party directly affected by the appeal within the meaning of rule 76(1) of the Court of Appeal Rules, and all that is required to be done is to seek leave to serve him with both the notice and record of appeal, so that he is aware of the proceedings. There is no need to force him to take part in the proceedings by making him a respondent.

The requirement for service puts him on notice, so that if an order is ultimately made which is prejudicial to him, he cannot complain that he was condemned without being heard.

This application is misconceived and is accordingly dismissed with costs to the respondent assessed at Shs.5,000/=, to be paid within 7 days, and in default execution to issue.

Dated and delivered at Nairobi this 5th day and November, 1997.

R. O. KWACH

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JUDGE OF APPEAL