



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITALE**

**Civil Suit 80 of 2009**

**DAVIS WAFULA NAKITARE  
POLLY NOICE NAKITARE  
DELTA CRESCENT CAMPS AND SAFARIS LTD ::::::::::::::: PLAINTIFF.**

**VERSUS**

**AGRICULTURAL DEV. CORPORATION ::::::::::::::: DEFENDANT.**

**R U L I N G.**

By a chamber summons application dated 17<sup>th</sup> December, 2009 pursuant to sections 75, 3 and 3A of the Civil Procedure Act, Order XLIII Rules 1 (2) and 4 of the Civil Procedure Rules, the applicant seeks orders:-

- (a) This application be certified as urgent and be heard on a priority basis.
- (b) Leave be granted to the plaintiffs/applicant to appeal against the ruling of this honourable court delivered on the 16<sup>th</sup> December, 2009 to the Court of Appeal.
- (c) Costs be provided for.

The application is based on the grounds:

- (i) Ruling was delivered in this matter on the 16<sup>th</sup> December, 2009 wherein the preliminary objection was upheld and the suit against the 3<sup>rd</sup> plaintiff struck out with costs.
- (ii) The plaintiffs/applicants is dissatisfied with the said ruling and intends to appeal against the whole of the said ruling to the Court of Appeal.
- (iii) No leave was orally sought in court when the said ruling was delivered.
- (iv) This honourable court is seized of the requisite jurisdiction to grant the orders prayed for.

The application is predicated upon the annexed affidavit of Delmas Mwinamo sworn on the 17<sup>th</sup> day of December, 2009.

On behalf of the applicant, it was argued that a ruling was delivered on 10<sup>th</sup> December, 2009. By that ruling the preliminary objection by the defendant was upheld. The suit against the 3<sup>rd</sup> plaintiff was struck out.

**Being aggrieved by the said ruling, the plaintiff/applicants has decided to appeal. Before an appeal can be filed there is need to seek leave, as no leave was sought orally, and as such none was granted. That it is imperative and in the interest of justice that leave be sought and granted by this court before an appeal can be lodged.**

On behalf of the respondent, it was argued that the notice of appeal has been filed by the 3<sup>rd</sup> plaintiff only. It clearly indicates that it is the 3<sup>rd</sup> plaintiff who is aggrieved by the ruling of the court. Yet the application before the court is a joint application for all the plaintiff's. Hence the application before the court is at variance with the notice of appeal. This has embarrassed the respondents. They do not know how to respond to the application.

I have carefully analysed the application and the rival arguments. It is conceded that only the 3<sup>rd</sup> plaintiff is aggrieved and is the one who seeks leave to appeal. Yet the application is joint. It is axiomatic that the larger figure (namely 3) includes the lesser figure. Put in another way the 3<sup>rd</sup> plaintiff is a sub-set of the larger figure of 3 plaintiffs. Hence the 3<sup>rd</sup> plaintiff is part of the 3 plaintiffs. To my mind there is no defect in the application.

Accordingly, the application is granted in terms of prayer (b) and (c) of the application.

**Dated and delivered at Kitale this 30<sup>th</sup> day of June, 2010.**

**N.R.O. OMBIJA.**

**JUDGE.**

N/A for Applicant.

N/A for Respondent.