

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 179 OF 1995

HILDA NYAMBURA GATHURI PLAINTIFF

VERSUS

WILSON MWANGI RAMSONDEFENDANT

R U L I N G

An order for adduction of additional evidence on appeal can be made in the following circumstances namely:-

- (a) When the lower court refuses to admit evidence which ought to have been admitted;**
- (b) When the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgement, or**
- (c) For any other substantial cause.**

(see Order XLI rule 22 of the Civil Procedure Rules).

In regard to (a) and (b) the applicant has not submitted that the lower court declined to admit some particular evidence which was material to her case, nor has this court intimated it requires production of any document or examination of any witness to enable it pronounce judgement to bring into play above provisions of the Civil Procedure Rules. As regards © above, this provision would tend to relate to a situation where evidence emerges relating to the matter in issue and which the party complaining had no knowledge of, after judgement has been delivered or order made.

The submission of counsel herein relates to production of documentary evidence or adduction of oral evidence without saying whether the applicant became aware of this evidence after the lower court judgement or order – (see DICK vs KOINANGE [1973] E.A. 165 at P.166).

In any case, the grounds upon which this application is based appear to be the same ones as the grounds of appeal and that if the appeal were found to be meritorious one of the orders to be made would be a retrial in which event all the evidence intended to be produced/adduced in paragraph 8 of this application would be adduced.

This application is unsustainable and I dismiss it with no order for costs. The applicant whould move fast to fix the appeal to hearing.

Delivered this 20th day of February, 2002.

D.K.S AGANYANYA

JUDGE