

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. E207 OF 2021

BENSON MUSONYE MUSOGA & OTHERS.....APPELLANT

VERSUS

THE BOARD OF TRUSTEES, FRIENDS

CHURCH (QUAKERS) NAIROBI YEARLY MEETING.....RESPONDENT

RULING

1. The Appellant/Applicant's counsel M/s Wambulwa has while relying on Section 78 of the Civil Procedure Act and Section 29 of the Court of Appeal Rules objected to the Replying affidavit of one Hannington Mushera Imbayi. The reason being that the said deponent has never been a party to the proceedings and the annexures were being introduced at this stage.

2. Mr. Aswani for the respondent opposed the objection and submitted that the Court of Appeal Rules were inapplicable to this case while section 79 Civil Procedure Act was irrelevant. He defended the filing of the replying affidavit saying it was responding to the assertion by the appellants that there no meeting held.

3. First and foremost Section 78 or Section 79 Civil Procedure Act are not relevant to the objection raised by the appellant.

4. Secondly the Court of Appeal Rules are also not applicable to this appeal.

5. Thirdly it has not been denied by the Respondent that Hannington Mushera Imbayi is not a party in the proceedings before the lower court. The matter before me is an appeal and if any new matters have to be introduced it must be with the leave of the court. Whatever Hannington purports to tell the court must have been stated by those representing the Respondent herein. He cannot be introduced to the court through the Replying affidavit.

6. I therefore allow the objection raised and expunge from the record the Replying affidavit by Hannington Mushera Imbayi sworn on 7th June 2021 plus the annexures (HMI 1, 2, 3 & 5). Application to proceed to hearing.

Delivered online, dated and signed this 16th day of June, 2021.

H. I. ONG'UDI

JUDGE

In the presence of:

Ubah Adan – Court Assistant

Mr. Aswani for Respondent

M/s Wambulwa for Applicant