



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

HCCA 24 OF 2015

KENNETH MWENDA.....APPELLANT

VERSUS

JULIUS RIMBERIA.....1ST RESPONDENT

DOUGLAS MUGAMBI NKANATA.....2ND RESPONDENT

RULING

This application by way of Notice of Motion is dated 10.6.2015 and seeks orders:

1. ***THAT this application be certified as urgent.***
2. ***THAT this Honourable Court be pleased to admit the appeal to hearing in terms of Section 79 B of Civil Procedure Act.***
3. ***THAT the matter having been decided ex-parte after Respondents failed to appeal or file defence, this Honourable Court do give directions as to whether the Appeal should be heard ex-parte or whether Respondent should be served.***
4. ***THAT the costs of this application be in the Appeal.***

It is supported by the application of Kenneth Mwenda and has the following grounds:

- a) ***THAT the Respondents were served with a copy of the plaint and summons to appeal but refused to appeal or file defence.***
- b) ***THAT strangely the trial Magistrate dismissed the Appellant's suit and awarded costs to the Respondents.***
- c) ***THAT directions of this Court are necessary under the circumstances.***
- d) ***THAT it is clear that the trial Magistrate erred and the Appeal should be admitted to hearing.***

On 17.6.2015 this application was **NOT** certified urgent. On 22.10.2015, by consent, prayers 2, and 4 were allowed subject to the lower court's file being availed before the hearing of the Appeal. The appeal will be heard after it is served. I further direct that on a priority basis this court's Deputy Registrar initiates appropriate action to have the lower court's file availed and attached to this file before commencement of the hearing of the appeal.

Delivered in Open Court at Meru this 22nd day of October, 2015 in the presence of:

Cc. Daniel/Lilian

Rimita for the Appellant

Muthomi for the Respondent

P. M. NJOROGE

JUDGE