



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL APPEAL NO. 22 OF 2015

1. BRAIN ERICK FOCKLER

2. ABRAHIM TUTA MUMIA

3. GRACE RAELE MUNGALA:.....: APPELLANTS

VERSUS

PROF. HERMAN J.M. SSEMUJU:.....: DEFENDANT

RULING

1. This ruling is prompted by a development that took place a day after the hearing of the appeal had already started. The development is this: The appellants counsel brought amended grounds of appeal and that did not go down well with the respondent. The respondent raised objection. What followed were arguments and counter-arguments. The end result is this ruling.

2. This is a matter where things seem to be in a state of flux. The matter apparently seems ripe for hearing but things keep on cropping up. Before starting to hear the appeal on 12.11.2015, the respondent sprung a surprise. He came with some documents and the appellants side raised concern. The court eventually accepted some documents and we started hearing the appeal. It was rather late in the day and hearing did not go far. The matter was scheduled for further hearing the following day.

3. The following day came and it was the appellants turn to come up with a surprise. And the surprise is the development mentioned herein. The appellant wants to amend his Memorandum of appeal. The issue here is whether to allow or disallow the amendment.

4. The Respondent thinks that the appellant is trying to re-open concluded issues. He also thinks that the appellant should have brought a written application to which he can respond.

5. Well the Law is as stated by the appellant. Order 42 Rule (3) (2) of Civil Procedure Rules 2010, allows amendment even where hearing has started. All that is required is that an application be made. The respondent thinks the application should be written. The law is actually silent on this. The appellants application was oral.

6. I think that the ideal situation is where the application is written. But I also think that an oral application can be accepted provided the other side is afforded opportunity to respond. And that is what we have done here. I think that if we insist on written application, that only takes up more time which can otherwise be expended in hearing the Appeal.

7. I take the position that the amendment should be allowed. The Respondent loses nothing as he will

have ample opportunity to controvert and/or make the necessary rebuttals. The appellants request is therefore accepted and the filed- re-amended memorandum of appeal is hereby accepted.

8. I realize that the respondent may wish to respond. He is allowed to do so. It is important that both sides put everything in place for hearing. If this is not done changes will keep on coming up. We will then keep on hearing and re-hearing. We need to proceed without a hitch. Let both sides act with all due dispatch so that the matter can be heard without further delay.

A.K. KANIARU — JUDGE

ENVIRONMENT & LAND COURT BUSIA

Ruling delivered and Dated 1st day of December 2015.

In the Presence of

APPLICANT.....

RESPONDENT.....

A. K. KANIARU-JUDGE

ENVIRONMENT & LAND COURT BUSIA