



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: KWACH, J.A (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 59 OF 1999 (UR. 22/99)
BETWEEN

ATTORNEY GENERAL APPLICANT

AND

KAMLESH MANSUKHLAL DAMJI PATTNI..... 1ST
RESPONDENT

BERNARD KALOVE 2ND RESPONDENT

LIONEL JOHN SMITH 3RD RESPONDENT

(Being an application for extension of time/amendmet

of notice of appeal in the intended appeal from the

decision and ruling of the High Court of Kenya at

Nairobi by (Hon. Lady Justice Aluoch) dated 11th

February, 1999

in

MISC. APPLICATION NO. 1296 OF 1998

NOTES

24-3-1999

Coram: Kwach, J.A (In Chambers)

2.30 p.m.

Mbuthi Gathenji

For applicant

A. R. Rebelo

For respondent

Court Clerk: Paul Kerosi

Gathenji: Application under rule 4 of the Court of Appeal Rules pp 7-8. To amend Notice of Appeal lodged in the High Court on 15th February, 1999. Address for service. In the alternative leave to file a fresh notice of appeal and record of appeal. Typographical error instead of 11th February, 1999 it was

dated 11th February, 1998. At page 54 Attorney General referred to as ARespondent@. We want to correct these errors and we have come without delay. No prejudice to the respondents. We have come within the shortest time possible. Matter concerns a prohibition order with considerable public interest. Court of Appeal has yet to deal with such matters. If application is allowed we shall proceed with speed.

I made a mistake. KKB v Mbaluka p.12.

You have a discretion in this matter to grant the relief I seek. Wider interests of justice.

Rebello: Notice of appeal is a primary document and cannot be amended. The existing document is a nullity and rule 44 of no assistance. In the affidavit the error is blamed entirely on the secretary. Errors (b) and (c) cannot be made by a secretary. Duty of drawing a notice of appeal allocated to a secretary. The case is important to the public therefore greater need to exercise maximum caution. The supporting affidavit not candid. No letter of appointment by Attorney General.

The case involves the liberty of the respondents. I urge this Court to dismiss this application.

Gathenji (in reply):

You can amend or give us leave to file a fresh notice of appeal. We have come with alternatives.

Order: Ruling on Tuesday, 30th March, 1999 at 2.30 p.m. in

Court No. 2.