

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
civ app 247 of 97

PETER M. ECHARIAAPPELLANT

VERSUS

PRISCILLA N. ECHARIA.....RESPONDENT

Court of Appeal - Court of Appeal Rules, Rule 42 (1) - Notice of Motion - whether incurably defective by reason of failure to state the grounds of the application. Rule 42(1) of the Court of Appeal Rules provides that “all applications to the Court shall be by motion which shall state the grounds of the application”. A Notice of Motion which does not set out the grounds on which it is based is defective but the defect is curable by amendment. G. Kamau Kuria for the Appellant Martha Karua for the Respondent.

RULING OF THE COURT

The Respondent has applied that this appeal be struck out as incompetent. Dr. Kamau for the Appellant objected to the notice of motion as being incurably defective for failing to comply with Rule 42(1) of the Rules of this Court. That rule states that “all applications to the Court shall be by motion, which shall state the grounds of the application”. He submitted that this requirement being mandatory in its language it is not enough for the grounds to be given only in the supporting affidavit. The respondent should know the case he/she has to answer. Ms. Karua for the applicant/respondent submitted that the ground is stated in the body of the application” as incompetent”, and if that is not sufficient she asked to be granted leave to amend the application.

We agree that the Notice of Motion is defective but the defect is curable, and, for that reason, and Ms. Karua having applied for leave to amend the notice of motion, we grant leave for the Respondent to amend the notice of motion so as to comply with the requirements of Rule 42(1) of the Rules of the Court.