



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: GICHERU, TUNOI & LAKHA, J.J.A.)**

**CIVIL APPEAL NO. 167 OF 1998**

**BETWEEN**

**1. SIMON KITAVO NDUTO**

**2. JUBILEE INSURANCE COMPANY.....APPLICANTS**

**AND**

**BENSON OWENGA ANJERE.....RESPONDENT**

**(An appeal from the ruling of the Hon. Mr. Justice  
Khamoni dated the 17th day of May, 1995 at Nairobi  
in  
H.C.C.C. NO. 2452 OF 1982)**

**\*\*\*\*\***

**RULING OF THE COURT**

The appellants in this matter have brought an application under Rules 42 (1) and 85 (2A) of the Court of Appeal Rules, for an order granting leave to file a supplementary record of appeal to bring on record a copy of the order granting them leave to appeal against Khamoni J.'s ruling dated 17th May, 1995. There is no legal impediment to the grant of the leave sought in view of the provisions of rule 85 (2A) above. The appellants' counsel in her affidavit in support of the present application says that a copy of the order sought to be brought into the record was omitted by oversight. I do not doubt that and, in exercise of my judicial discretion under rule 42 of the Rules of this Court, I grant the leave sought, moreso because I am satisfied that no prejudice is likely to be occasioned to the respondent by the grant of the leave.

I however make no order as to the costs of this application. The supplementary record to be filed and served within 15 days from the date hereof.

**Dated at Nairobi this 11th day of April, 1997.**

**S. E. O. BOSIRE**

**.....**

**AG. JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR**