

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KWACH, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 136 OF 1997 (58/97UR)

BETWEEN

FREDRICK WACHIRA NDEGWA

(SUBSTITUTED NDEGWA WACHIRA) APPLICANT

AND

RICHARD WANJIKU NDANJERU

BEAUTTAH KANYORA MUTHUI RESPONDENTS

**(Application for extension of time to lodge notice of
appeal in an intended appeal from judgment and order
of the High Court of Kenya at Nyeri (Justice Osiemo)
dated 18th November, 1996**

in

H.C.C.C. NO. 300 OF

R U L I N G

In this application brought under rule 4 of the Rules of this Court, the applicant, Fredrick Wachira Ndegwa (the applicant), is seeking most peculiar orders. He wants time extended to enable him to file a second notice of appeal in an appeal which he lodged in this Court on 16th January, 1997 (Civil Appeal No. 15 of 1997). He is also asking for a second order to the effect that the record in that appeal is properly before the Court.

In his supporting affidavit and his submissions before me the applicant said that the notice of appeal he filed in the superior court on 19th November, 1996, was not dated as required by rule 74(6) of the Rules of this Court which requires such notice to be dated, among other things.

There are two reasons why I cannot grant the orders sought by the applicant. As a single Judge of this Court I have power to extend time to file a notice of appeal. If I permit the applicant to file a second notice he cannot use it, as he intends, to validate the defective notice in the record of appeal in Civil Appeal No. 15 of 1997. Such a notice of appeal cannot form part of the record in that appeal because, being a primary document within the meaning of rule 85(1) of the Rules of this Court, it cannot be added to the record of appeal by way of a supplementary record with or without the leave of the Court.

The second reason is that I have no power to declare a record of appeal to be in proper form. That is the preserve of the full Court. It would be foolhardy on my part to commit what in essence would constitute an act of judicial trespass.

These are my reasons for refusing to grant the orders sought by the applicant.

The application is dismissed but with no order as to costs as the respondents have not appeared though

served.

Dated and delivered at Nairobi this 18th day of June, 1997.

R.O. KWACH

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.