



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(Coram: Gicheru, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 83 OF 1997 (38/97UR)

BETWEEN

- 1. ABERCROMBIE & KENT LIMITED.....1ST APPLICANT**
2. ILKAREKESHE GROUP TRUST REGISTERED TRUSTEES.....2ND APPLICANT

AND

OLOOLOLO GAME RANCH LIMITED.....RESPONDENT

(In the matter of an intended appeal from the Ruling and order

of the High Court of Kenya at Nairobi (Khamoni, J.)

dated 27th February, 1996

in

H.C.C.C. NO. 3457 OF 1995)

RULING:

In this application, the applicants have sought extension of time within which to lodge the notice and the record of appeal. The applicants original appeal NO. 80 of 1996 was struck out by this Court on 10th April, 1997 for the reason that the notice of appeal contained therein was unsigned by or on behalf of the applicants as is required by **rule 74(6)** of the Rules of this Court with the result that there was no notice of appeal in that appeal rendering the same incompetent. Nineteen days later, the present application was made.

At the resumed hearing of this application on 30th July, 1997 there was no appearance for the applicants. Nonetheless, counsel for the respondent submitted that the intended appeal will only delay the prosecution of H.C.C.C. NO. 3457 of 1995 as the same will not turn on a serious issue for whether or not the affidavit of Mugesu Ole Kuseyo was defective as deponed in the applicants' affidavit in support of their application, the same is not fatal to their case in the superior court.

From the affidavit in support of the applicants' application, it is not apparent what effect the alleged defect

in the affidavit of Mugesa Ole Kuseyo in the superior court would have to their case in that court. Indeed, save for what appears in the ruling of the superior court annexed to their affidavit in support of this application, the overall effect of the preliminary objection taken by the applicants in that court to their case therein is not clear.

It seems to me that it is the rejection of their preliminary objection in the superior court that is the subject-matter of the applicants' intended appeal in respect of which this application is made. Whether or not such an appeal will turn on a serious issue or it will only serve to delay the prosecution of the suit in the superior court is not possible to say with any amount of firmness as there is insufficient material in the applicants' present application for such an answer. In the circumstances and in the absence of any rebuttal to the submission of counsel for the respondent in this regard, I think that the inadequacy of the material before me in support of the applicants' application restrains me from exercising my discretion in favour of the applicants under **rule 4** of the Rules of this Court. The application for extension of time within which to lodge the notice and the record of appeal is therefore dismissed with costs to the respondent.

Dated and delivered at Nairobi this 4th day of August, 1997.

J.E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR