



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, OMOLO & TUNOI, JJ.A.)

CIVIL APPEAL NO. 218 OF 1995

BETWEEN

GABRIEL MWAURA NG'ANG'A.....APPELLANT

AND

LAWRENCE ITUBE NG'ANG'A.....1ST RESPONDENT

PATRICK KINUTHIA NG'ANG'A..... 2ND RESPONDENT

(Appeal from the Ruling of the High Court of Kenya at Nairobi (Mr. Justice A.B. Shah) dated 30th June, 1994

IN

H.C.C.SUCC. CAUSE NO. 975 OF 1993)

RULING OF THE COURT

Mr. Rumba Kinuthia, for the appellant, concedes that he applied for, and obtained leave to appeal without serving the application on the respondents who were consequently not heard at all. They were entitled to be heard and the appellant cannot be allowed, at any rate in this Court, to take advantage of an order irregularly obtained. That being the case, we allow the motion and strike out the notice of appeal dated 17th October, 1995 and Civil Appeal No. 218 of 1995. The respondents will have costs of both the motion and of the appeal.

Dated and delivered at Nairobi this 25th day of April, 1996.

R.O. KWACH

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JUDGE OF APPEAL

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR