

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI 71 OF 1995

BETWEEN

LAWRENCE ITUBE NGANGA

PATRICK KINUTHIA NGANGA APPLICANTS

AND

GABRIEL MWAURA NGANGA RESPONDENT

(Application for striking out a notice of appeal filed on 13th July, 1994 in an intended appeal from the judgment of the High Court of Kenya (Mr. Justice A.B. Shah) delivered on 30th June, 1994

in

H.C.C.C SUCCESSION CAUSE NO. 975 OF 1993

RULING OF THE COURT

An appeal does not lie to this Court in this matter without the leave of the superior court. There is no evidence that such leave was sought or granted. Mr. Rumba Kinuthia, for the respondent, says that he sought leave verbally before the Judge but with respect there is no evidence on record to support this claim. That being the position any appeal to this Court without leave would be incompetent. In the circumstance we allow the application and order that the Notice of Appeal filed herein on 13th July, 1994 and dated 11th July, 1994 be and is hereby struck out with costs for the applicant assessed at Shs.500/-, to be paid within 7 days and the defendant execution to be issued.

Dated and delivered at this 22nd day of May, 1995.

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