



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPEAL (APPLICATION) NO. 229 OF 2015

BETWEEN

BONIFACE NJIRU t/a NJINI BONIFACE & CO. ADVOCATES.....APPLICANT

AND

ISAAC MWANGI WAINAINA.....RESPONDENT

(An appeal from the Ruling of the High Court of Kenya (Hon. J. K. Sergon, J.) dated 30th July 2015

in

Milimani HCCC No. 202 of 2013)

RULING OF THE COURT

1. **UPON** perusing the Notice of Motion dated 18th December 2019, by the Appellant/Applicant under **Rules 44(1) and (2), 88 and 92** of the Court's rules, substantively seeking an order for leave to amend the memorandum of appeal filed herein in order to add two further grounds thereon as per the draft memorandum of appeal attached to the supporting affidavit; an order for leave to include in a supplementary record of appeal, the decree issued by the High Court in respect of the judgment delivered in HCCC No. 202 of 2014 and further proceedings by the High Court since delivery of the judgment; an order for further directions concerning the filing of the supplementary record of appeal as may be appropriate; and an order that costs be provided for; and

2. **UPON** reading the grounds in the body of the application and the supporting affidavit of **Boniface Njiru**, the appellant/applicant in **Civil Appeal No. 229 of 2015 Boniface Njiru t/a Njiru Boniface & Co. Advocates vs. Isaac Mwangi Wainaina** sworn on 18th December 2019; and

3. **UPON** noting that there is no replying affidavit filed by the respondent in opposition to the application despite service upon him on 18th December 2019 of the application under consideration; and

4. **HAVING** considered the principles that guide the court in the exercise of its mandate under **Rules 44(1) and (2), 88, and 92** of the Court's Rules as enunciated by **Omolo, J.A** (as he then was) in **Uhuru Highway Development Limited vs. Central Bank of Kenya & 7 Others [2002]eKLR**; and subsequently variously reiterated by **Karanja, J.A.** in **John Gakuo & Another vs. County Government of Nairobi & Another [2017]eKLR**; and **M'inoti J.A** in **Governor's Ballon Safaris Limited vs. Skyship Company Limited & Another [2018]eKLR** among numerous others and which I fully adopt, I am satisfied that the applicant's unopposed Notice of Motion has satisfied the threshold for granting relief under the cited rules; and

5. **HAVING** reached that conclusion, I make the following orders:

(i) Prayers 2 and 3 of the Notice of Motion is allowed as prayed.

(ii) The amended memorandum of appeal and supplementary record of appeal to be filed within fifteen (15) days of the date of the delivery of the ruling.

(iii) Costs of the application to be in the appeal.

Dated and delivered at Nairobi this 9th day of October, 2020.

R. N. NAMBUYE

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR