



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: KANTAL, JA. (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. 8 OF 2020

BETWEEN

THE ATTORNEY GENERAL.....APPELLANT/APPLICANT

AND

LEISURE LODGES LIMITED.....RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Mombasa (E.K. Ogola, D. Chepkwony, M. Thande, JJ.) dated 23rd May, 2019

in

Petition No. 21 of 2010)

RULING

The Motion dated 12th June, 2020 is brought under **section 1A and 1B** of the **Appellate Jurisdiction Act, rules 1 (2), 16 and 90 (2)** of the **Rules of this Court**. It is prayed that leave be granted to amend the Memorandum of Appeal dated 14th January, 2020 to include all the respondents who are listed in the application who are said to be parties in the amended **High Court Petition No. 11 of 2010** to be respondents in the appeal. There are 762 parties set out who it is intended to include as respondents. It is further prayed that this Court grants leave to serve the said respondents and any affected party be allowed to join the “suit” as respondents. In grounds in support of the motion and in an affidavit of **Dick Safari**, County Land Registrar, Kwale County it is said amongst other things that the applicant/appellant filed a Memorandum of Appeal on 15th January, 2020; that other respondents were inadvertently omitted or were not listed as parties during drafting of Memorandum of Appeal; that all respondents who participated in the petition at the High Court had been served with Memorandum of Appeal; that lawyers for the affected parties have been served with Record of Appeal; that the matter is of public interest affecting many people in Diani; that advertisement will assist other affected persons and that it is fair and in the interest of justice that the orders be granted.

There is a replying affidavit of **Eunice Wanja Njeru Kibe**, counsel for the respondent which essentially raises issues that go into the competence of the appeal. Counsel depones that certain essential steps necessary for an appeal to be competent were not taken. Also that there is a pending application that prays that the appeal be struck out. I take the view that these are not issues before me. They can be taken before the full court.

I also saw a letter by **Wanja & Kibe Advocates** dated 31st October, 2020 where certain issues are raised. I have asked the Deputy Registrar to respond to that letter.

The applicant and the respondent filed written submissions which I have considered.

The applicant apologizes for a mistake which he says was inadvertent when he drew Memorandum of Appeal and omitted to include some parties as respondents. It is further stated that the dispute at the High Court affected many people and the matter is one of public interest.

It is a requirement of the rules of the court that all parties affected be served with notice of appeal.

In the Motion before me I am told that parties directly affected by the appeal were omitted when Memorandum of Appeal was being drawn. A reasonable explanation as to why these parties were inadvertently omitted has been given and I am satisfied with it. In the premises I grant

leave to the applicant to amend Memorandum of Appeal dated 14th January, 2020 to include all the names of persons listed in the motion as respondents in the appeal. I further grant leave for any affected party to join the appeal. Let the applicant serve the said persons (respondents) or other affected person by advertisement in two (2) daily newspapers with national circulation within twenty-one (21) days of today. Costs of the motion will be in the appeal.

Dated and delivered at Nairobi this 6th day of November, 2020.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR