



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GATEMBU, JA (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. 85 OF 2020

BETWEEN

TABITHA WOTHAYA NDIGIRIGI.....APPELLANT/APPLICANT

AND

MOHAMMED MUTUKU MUTISYA NZIOKI.....1ST RESPONDENT

JOSEPH MACHUKA OKARU.....2ND RESPONDENT

MAIMA NAYKINYWA MOHAMMED.....3RD RESPONDENT

JOYCE TERESA AKINYI OCHIENG.....4TH RESPONDENT

RICHARD KARIRU NGUNJIRI.....5TH RESPONDENT

(Being an application for leave to file and serve a supplementary record of appeal

and that the record of appeal be validated by such leave)

RULING

1. By her application dated 15th July 2020, the applicant, Tabitha Wothaya Ndigiri, acting in person seeks an order that she be granted leave to file and serve a supplementary record of appeal and that the record of appeal be validated by such leave. She deposes in her supporting affidavit that the documents proposed to be included in the supplementary record are vital and proper for the conclusive determination of the appeal; that when preparing the record, the decree was not ready although she had already applied for it.

2. In addition to the decree, the other documents sought to be included in the proposed supplementary record are:

a) ...

b) Business Names Register for Toika International Company.

c) Letter from the Department of the Registrar General dated 30th December 2010 to Office of the President, Criminal Investigation Department.

d) KRA PIN Certificate.

e) Letter from the Department of Registrar General dated 11th October 2010.

f) Letter dated 5th September 2019 to the Deputy Registrar Environment and Lands Court and Receipts.

g) Court Order given on 4th March 2008 in respect of Civil Suit No. Misc. 102 of 2007.

h) Letter of allotment dated 9th December 2005

i) Copy of Title for L.R. No. 209/12734.

3. In his replying affidavit in opposition to the application, Richard Kabiru Ngunjiri the 5th respondent deposes that the application is an abuse of the process of court as the applicant does not require leave to file the supplementary record; and that the some of the documents proposed to be included in the supplementary record, namely:

i. Business names Register for Toika International Company.

ii. Letter from the Department of the Registrar General dated 30th December 2010 to Office of the President, Criminal Investigation Department; and

iii. Letter from the Department of the Registrar General dated 11th October 2010 were not before the trial court.

4. Having considered the application and the affidavits, the appellant is at liberty, in accordance with Rule 92(3) of the Court of Appeal Rules, to file and serve a supplementary record of appeal. The supplementary record of appeal shall be limited to the decree and to documents which were before the trial court omitted from the record of appeal.

5. The supplementary record of appeal shall be filed and served within 14 days from the date of delivery of this ruling.

6. Costs of the application shall be in the appeal.

Dated and delivered at Nairobi this 4th day of December, 2020.

S. GATEMBU KAIRU, (FCI Arb)

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR