



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GITHINJI, KOOME & MWILU, JJ.A.)

CIVIL APPEAL NO. 231 OF 2010

Between

CITY COUNCIL OF NAIROBI.....APPELLANT

And

WOOLWICH INVESTMENTS LIMITED.....RESPONDENT

*(Being an appeal against the Ruling and Order of the High Court of Kenya at Nairobi (**Mbogholi Msagha, J**) dated 18th February 2010*

in

H.C.C.C. No. 462 Of 2009

ORDER OF THE COURT

The respondent in this appeal filed a suit against the appellant in the High Court through the firm of “**Mutuli & Apopo Advocates**” challenging the demand for rates in respect of its property LR. No. 330/357 under the **Rating Act**. The respondent also filed an interlocutory application to restrain the appellant from selling its property LR. No. 330/357 to recover the demanded rates pending the hearing and determination of the suit.

The affidavit in support of the application disclosed that the suit property measures approximately 0.996 Hectares and is situated on Gitanga Road, Nairobi on which is erected a dwelling house. The application for interlocutory injunction was allowed by **Msagha, J.** on 18th February 2010. The appellant filed the present interlocutory appeal against the decision.

At the hearing of the appeal, there was no appearance by the respondent’s advocates and the appeal proceeded to hearing *ex parte* and the court reserved its judgment. In the course of preparation of the judgment, the court perused the court records and discovered that the hearing notice was indeed served on the firm of “**Mutuli & Associates Advocates**”. The firm of “Mutuli & Associates Advocates” has not filed a notice of change of advocates pursuant to rule 23(1) of the Court of Appeal Rules (Rules).

By Rule 75(3) a person who intends to appeal is required to lodge a notice of appeal in the prescribed form and by Rule 75(3), such notice of appeal shall, *inter alia*, state the names and addresses of all

persons intended to be served with the copy of the notice. The notice of appeal dated 26th February 2010 which was lodged in the registry indicated that it was to be served on “Mutuli & Apopo Advocates. By Rule 79(1) (a) – every person on whom a notice of appeal is served is required *inter alia* to serve on an appellant, notice of full and sufficient address of service.

However Rule 77(2) provides:

“Where any person required to be served with a copy of the notice of appeal gave any address for service in or in connection with the proceedings in the superior court, and has not subsequently given any other address for service, the copy of the notice of appeal may be served on him at that address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of an appeal.”

It was thus proper to serve a notice of appeal on the firm of “Mutuli & Apopo Advocates”. It would also be proper to serve a hearing notice on the same firm of advocates.

However, it was improper to serve a hearing notice on the firm of “Mutuli & Associates Advocates” who were not on record for respondent in the High Court and who had not filed a notice of change of advocates. The firm that was on record was Mutuli & Apopo Advocates.

The service of hearing notice on the wrong firm of advocates denied the respondent of a cardinal right of hearing in the appeal. A judgment delivered in breach of the respondent’s right to fair hearing as enshrined in Article 50(1) of the Constitution, would be invalid.

In the premises, the Court in exercise of its inherent jurisdiction under Rule 1(2) directs that the appeal be re-heard *inter partes* upon service of hearing notice on the firm of advocates on record for the respondent. In the event that the firm of advocates no longer exists, the hearing notice should be served on the respondent in any of the prescribed manner of service, we so order.

The delay in making this order is regretted. It was due to the fact that members of the bench took official leave at different times after the judgment was reserved.

Made at Nairobi this 22nd day of July, 2016.

E.M. GITHINJI

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JUDGE OF APPEAL

M. K. KOOME

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JUDGE OF APPEAL

P.M. MWILU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR