



**IN THE COURT OF APPEAL**

**AT KISII**

**(CORAM: MARAGA. J. A IN CHAMBERS)**

**CIVIL APPLICATION NO. 48 OF 2011**

**BETWEEN**

**RUTH ACHIENG ONDITI .....1st APPLICANT**

**JOSHUA ODERO WAGUNDA .....2nd APPLICANT**

**AND**

**JAMAL RAMADHAN YUSUF.....1st RESPONDENT**

**CARPENTOCRAFT COMPANY LIMITED.....2nd RESPONDENT**

(An application for extension of time file and serve the Notice of Appeal and Record of Appeal out of time in an intended Appeal from the Judgment of the High Court of Kenya at Kisii (Asike Makhandia, J) dated 17th day of June, 2005)

in

**KISII HCCA NO. 234 OF 2005)**

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**RULING**

1. The proviso to Rule 77 (1) of the Court of Appeal Rules requires any intended appellant who wishes to dispense with service upon any party who did not participate in the proceedings in the Superior Court to apply for direction to that effect within seven days of lodging the notice of appeal.
2. In her notice of motion dated 26<sup>th</sup> June 2014, the 1st Appellant seeks an order directing that the 2nd Appellant need not be served with the notice and even the record of appeal in this matter. The reasons given for seeking not to serve the 2nd Appellant are that he did not participate in both the trial court and the High Court and that he cannot be traced for service.
3. Having considered the matter I find that the application has merit. Although the 2nd Appellant entered appearance and filed defence in the subordinate court, after his insurance company went into liquidation and the advocate it had instructed to defend the 2nd Appellant in that suit withdrew from acting for him, the 2<sup>nd</sup> Appellant never took part in the proceedings before the trial Court and even in the appeal in the High Court. I therefore allow this application and direct that the 2nd Appellant need not be served in the

appeal.

I make no order as to costs.

*Dated and delivered at Kisii this 24th day of February, 2015*

**D.MARAGA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**