



IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CIVIL APPEAL 84 OF 2004

FRED C. FEDHA & PETER W. FEDHA
(being the personal representative of the estate of
EDWIN WASHIKO FEDHA.....APPELLANT/RESPONDENT
AND
EDWINE E. ASAVA MAJANIRESPONDENT/APPLICANT

*(Application to strike supplementary record of appeal from a judgment of the High Court of Kenya at Eldoret
(Nambuye, J.) dated 13th October, 1999*

in

H.C.C.C. NO. 7 OF 1996)

RULING OF THE COURT

The respondent has moved this Court under **rules 80** and **82** of this Court's Rules, seeking an order that the supplementary record filed on 6th March, 2009, on the only ground that the respondent has filed a whole record of appeal instead of only parts of the record.

The respondent was granted leave on 25th February, 2009 to file a supplementary record because the record of appeal had some pages which were not easily legible. The respondent in his counsel's judgment decided to include virtually all documents in the record of appeal in the supplementary record. Mr. Keyonzo for the applicant has submitted that by including all the documents in the record of appeal, in a supplementary record of appeal, the respondent did not comply with the court order aforesaid.

We have considered the application and in view of the provisions of **section 3A** of the **Appellate Jurisdiction Act** we consider that this motion is without merit. The supplementary record of appeal though bulky does not offend the rules of this Court and considering the overriding objective of civil litigation contained in the aforesaid section, we are inclined to disallow the prayer relating to the supplementary record of appeal.

As regards the second prayer in the aforesaid motion, in which the applicant seeks an order deeming the notice of appeal filed on 8th March, 2004 as having been withdrawn, for the same reason we gave earlier this prayer also fails.

Accordingly the notice of motion dated 6th April, 2009 fails and is dismissed but with no order as to costs.

Dated and delivered at Eldoret this 18th day of February, 2010.

S.E.O. BOSIRE

.....
JUDGE OF APPEAL

E.M. GITHINJI

.....
JUDGE OF APPEAL

J.W. ONYANGO OTIENO

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR