



IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLI. NAI NO. 271 OF 2006 (UR 130/2006)

EVANS KAGECHE BORO APPLICANT

AND

STANLEY MUNGA GITHUNGURI & 7 OTHERS.....RESPONDENTS

(An application for leave to amend Civil Application No. Nai. 355 of 2004 (UR. 184/04) by substituting deceased respondent number four (4) and number five (5) with their legal representatives in accordance with the substitution order in H.C.C.C. No. 1519 of 1993 Nairobi dated 21st July 2006

in

H.C.C.C. No. 1519 of 1993)

RULING OF THE COURT

The applicant herein, *Evans Kageche Boro*, seeks two orders from the Court. First, leave to amend **Civil Application No. 355 of 2004** and second, leave to substitute the 4th and 5th respondents with their legal representatives.

The judgment the subject matter of the intended appeal was delivered on 15th July, 2004 by Aluoch, J (as she then was). It is apparent that thereafter several applications were made before the superior court and this Court, some have been disposed of and some are still pending before the two courts.

However, what is clear is that there is no notice of appeal incorporated in the record before us, a fact that Mr. Ritho, counsel for the applicant, admits. His explanation is that he has sought leave of this Court in **Civil Application No. 353 of 2004** to lodge one out of time. However, the application thereto has not been disposed of.

Mr. King'ara for the 1st and 2nd respondents submits that in the absence of a notice of appeal we should down our tools and refuse to hear the application since we lack jurisdiction.

We would agree. As there is no notice of appeal, this application together with **Civil Application No. Nai. 270 of 2006** which contains similar application and in which an order has been made by a learned single judge of this Court that it be heard before the full Court, are incompetent and are hereby both ordered struck out with costs to respondents numbers 1, 2 and 3.

We so order.

Dated and delivered at NAIROBI this 11th day of July, 2008

P. K. TUNOI

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JUDGE OF APPEAL

E. O. O’KUBASU

.....

JUDGE OF APPEAL

E. M. GITHINJI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.