



**IN THE COURT OF APPEAL OF KENYA**

**AT ELDORET**

**CIVIL APPEAL 354 OF 2002**

**RAEL MUYAKA**

**HELINA NASIMIYU**

**WASIKE MURAMBOCHI**

**DAVID SICHARANI**

**DICKSON SABUNI**

**FLORENCE NAMALWA**

**THOMAS SHIKUKU .....APPELLANTS**

**VERSUS**

**WAITALUK LAND DISPUTES TRIBUNAL COMPRISONG OF**

**MBOTO KIDAI**

**HARUN KIPSUGUT**

**EZEKIEL KESSIO .....RESPONDENTS**

**(Appeal from the ruling of the High Court of Kenya at Kitale (Etyang J) dated 18<sup>th</sup> December, 2001**

**in**

**MISC. APPL. NO. 102 OF 2001**

**\*\*\*\*\***

**ORDER OF THE COURT**

This is an appeal from the Ruling of the superior court (Etyang J) in Kitale *Miscellaneous Civil*

*Application No. 102 of 2001* delivered at Kitale on 18<sup>th</sup> December, 2001. In that ruling, the superior court dismissed the Appellants' Amended Notice of Motion filed on 3<sup>rd</sup> October 2001. The parties appeared before us on 20<sup>th</sup> September 2006 and argued the appeal at length. We then reserved our judgment on the same and directed that it be delivered today 13<sup>th</sup> October 2006.

In the process of preparing the judgment, we perused carefully the record of appeal before us, and have noted to our dismay that the Amended Notice of Motion which was considered by the superior court and upon which the Ruling was based was not included in the record of appeal before us as is required by **Rule 85 (1)** of the Court of Appeal Rules. The amended Notice of Motion is a primary document and had to be included as part of the record of appeal. In the circumstances, we cannot deliver judgment in this matter as in law there is no valid appeal before us upon which a judgment can be given. Its omission is fatal to the entire appeal which regrettably must be struck out.

This appeal stands struck out. We make no orders as to the costs. These are the orders of the Court.

**Dated and delivered at Eldoret this 13<sup>th</sup> day of October, 2006.**

**R. S. C. OMOLO**

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**JUDGE OF APPEAL**

**J. W. ONYANGO OTIENO**

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**JUDGE OF APPEAL**

**W. S. DEVERELL**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**