



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: DEVERELL, J.A. (IN CHAMBERS)

CIVIL APPLICATION NAI 158 OF 2005

BETWEEN

MALDE TRANSPORTERS LIMITED APPLICANT

VS

JOHN NGANDU KINUTHIA1ST RESPONDENT

BASHIR ARAB MOHAMED

AND

FATUMA HAJI HASSAN (Suing as the Administrators of the Estate of

ARAB MOHAMED AHMED2ND RESPONDENT

(Being an application for leave to dispense with service of the notice of

*appeal filed from the ruling and order of the High Court of Kenya at
Nairobi (Mr. Justice J. B. Ojwang) dated 3rd June, 2005*

in

H.C.C.C. NO. 365 OF 1999)

R U L I N G

This is an application by Malde Transporters (the Second Defendant in the superior court) that service of the Notice of Appeal filed in High Court Civil Case No. 365 of 1999 on the 1st Respondent (1st Defendant in the High Court) Mr. John Ngandu Kinuthia be dispensed with on the principal grounds that the 1st Respondent did not take any part in the proceedings before the superior court and did not give any address for service in the superior court proceedings and the Applicant is not aware of his whereabouts for purposes of effecting service of the notice of appeal.

There is no appearance for the intended 2nd Respondent who therefore presumably has no objection to the application, which is brought under rules 42 and 76 of the Court of Appeal Rules (the Rules).

Rule 76 provides:-

***“76. (1) An intended appellant shall, before or within seven days after lodging notice of appeal, serve copies thereof on all persons directly affected by the appeal: Provided that the Court may on application, which may be made ex parte, within 7 days after lodging the notice of appeal, direct that service need not be effected on any person who took no part in the proceedings in the superior court.*”**

(2) Where any person required to be served with a copy of a notice of appeal gave any address for service in or in connexion 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.”

The proviso to rule 76(1) as amended in by Legal Notice 76 of 1990 does include the words “which may be made ex parte within 7 days after lodging the notice of appeal”.

The present application was filed on 13th June 2005, which was within the 7 days from the lodging of the Notice of Appeal on 6th June, 2005.

In the circumstances I have no hesitation in granting the application as prayed and it is so ordered. The costs of the application shall be in the appeal.

Made at Nairobi this 27th day of September, 2005.

W. S. DEVERELL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR