



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU**

**CORAM: GITHINJI, J.A. (IN CHAMBERS)
CIVIL APPLICATION NAI 197 OF 2005**

BETWEEN

KAKAMEGA COUNTY COUNCILAPPLICANT

AND

THE CHAIRMAN TIRIKI EAST LAND

DISPUTES TRIBUNAL1ST RESPONDENT

JOTHAM ASEKA MAHERI2ND RESPONDENT

LABAN ASEKA3TH RESPONDENT

JOHN MUKALUSHI4TH RESPONDENT

(An application for leave to amend, extension of time to serve

*record of appeal and leave to dispense with service on 1st respondent at the
High Court of Kenya in Kakamega (Mr. Justice G.B.M. Kariuki) dated 26th
November, 2004*

in

H.C. MISC. NO. 2 OF 2003)

RULING

Applicant prays under *rules 4, 44 and 76* of the Rules of this Court respectively for three orders namely:-

- 1. THAT this honourable Court be pleased to extend time within which the record of appeal in Kisumu Civil Appeal No. 6 of 2005 is to be served.**
- 2. THAT this honourable Court be pleased to grant the applicant leave to amend his record of appeal.**
- 3. THAT service of the notice of appeal and record of appeal on the 1st respondent be dispensed with.**

Mrs Osodo learned Counsel for the applicant withdrew the second prayer in the application (for leave to amend) but prosecuted, the application in respect of the 1st and 3rd prayers. Mr. Michael Owuor, learned

Counsel for 2nd, 3rd, 4th respondents, does not oppose the application for the extension of time.

In respect of the third prayer, Mr. Michael Owuor states that he does not appear for the first respondent but that his clients would prefer that the first respondent be served with the notice and the record of appeal.

The application for the extension of time for service of the record of appeal is not opposed. Consequently, I allow the application for the extension of time and order that the record of appeal already served on the advocates for 2nd, 3rd and 4th respondents on 25th February, 2005 is deemed to be served within time.

Regarding the prayer for the dispensation of service on the first respondent I am satisfied from the supporting affidavit that first respondent though served with the application for judicial review in the superior court never participated in the proceedings.

Accordingly, I allow the third prayer in the application and order that service of the notice of appeal and the record of appeal on the 1st respondent be and is hereby dispensed with. The costs of this application shall be costs in the appeal.

Dated and delivered at Kisumu this 24th day of November 2005.

E. M. GITHINJI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR