

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: TUNOI, J.A (IN CHAMBERS)

CIVIL APPEAL NO. 122 OF 2001

BETWEEN

SAMUEL MIKI WAWERUAPPELLANT

AND

JANE NJERI RICHURESPONDENT

RULING

Having heard the submissions of Mr. Khawaja in support of the application and those of Mrs. Wanyaga in opposition thereto, I am satisfied that I should grant the prayers sought in the Motion dated 1st October, 2003, and I do so. The costs occasioned by the application shall be in the appeal.

Rule 85 (2A) does not prohibit the inclusion of an amended memorandum of appeal in a supplementary record of appeal under rule 89(3). See *Malindi Air Services Limited v. CMC Aviation Limited* Civil Appeal No. 105 of 1999 (Mombasa) (unreported).

Furthermore, a memorandum of appeal is not a primary document and subject to the interests of justice, is always amenable to amendment. See *Uhuru Highway Development Limited v. Central Bank of Kenya* (2002) 1 A E A 314 (unreported).

Dated and delivered at Nairobi this 10th day of March, 2004.

P.K. TUNOI

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JUDGE OF APPEAL

I certify that this is a true copy

of the original.

DEPUTY REGISTRAR