



**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: GICHERU, TUNOI & OWUOR, J.J.A.)

CIVIL APPLICATION NO. NAI. 446 OF 2001

BETWEEN

LAWRENCE MUSYOKA WAMBUA T/A

L. M. WAMBUA & CO. ADVOCATES APPLICANT

AND

UNITED INSURANCE CO. LTD..... RESPONDENT

(Application to strike out a Notice of Appeal dated 27th September, 2001 giving notice of intention from the Ruling and Order of the High Court of Kenya at Nairobi (Visram, J) dated 26th September, 2001

in

H.C.CIVIL SUIT NO. 1427 OF 2000)

RULING OF THE COURT

By this application expressed to be brought under rules **80, 76, 74(3), 42 and 43** of the **Court of Appeal Rules, the Rules**, the applicant seeks an order to strike out a notice of appeal dated 27th September, 2001 and filed by United Insurance Co. Ltd, the respondent, against the decision of the superior court (Visram J) made on 26th September, 2001, on the the grounds that the respondent has failed or omitted to serve the notice of appeal on persons directly affected the appeal.

In the plaint lodged in the superior court on 30th August, 2000, the respondent sued the applicant alleging that the applicant in his capacity as an Advocate has and continues to fraudulently represent numerous bogus and non-existent claimants claiming to be victims of accidents involving motor vehicles insured by the respondent. The cumulative sum claimed by the applicant is in the region of Shs. 30 million. In the plaint the names of eighteen claimants are set out together with their respective decretal sums awarded by the Senior Resident Magistrate's Court at Kangundo. The respondent prayed for several orders which, we think, are not relevant to the application before us and we need not cite them.

It is manifestly clear from the record of the superior court that the parties were represented by counsel duly appointed by them to act on their behalf. These advocates are recognised agents of the parties by whom such appearances, applications and acts may be made or done as mandated by **Order III rule 2** of

the **Civil Procedure Rules**.

The decree holders named in the plaint were adequately represented by the Advocate of the applicant by whom and through whom they were acting. The applicant and the decree holders are inseparable. There was no need, therefore, to serve each of the decree holders with the notice of appeal as counsel for the applicant had been duly served on behalf of all of them. To do this would amount to serving the notice of appeal upon the party and its counsel in the same intended appeal. This is not the purport of rule 76 of the Rules.

In our view, this application is misconceived and totally without merit and is accordingly dismissed with costs.

Dated and delivered at Nairobi this 3rd day of May, 2002.

J. E. GICHERU

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR