

REPUBLIC OF KENYA
 IN THE COURT OF APPEAL
 AT NAKURU
 (CORAM: O'KUBASU, J.A. (IN CHAMBERS))
 CIVIL APPLICATION NO. NAI. 259 OF 2000
 BETWEEN

EZEKIEL NGAREAPPLICANT
 AND
 DOUGLAS KAHARARESPONDENT

(Application for leave to appeal as a pauper in an intended appeal from a Judgment of the High Court of Kenya at Kitale (Justice Nambuye) dated 13th day of April, 2000 in H.C.C.C. NO. 34 OF 1997)

RULING

This is an application by way of Notice of Motion brought under **rule 112** of this Court's Rule in which the applicant Ezekiel Ngare is seeking to be allowed to appeal as a pauper in the Land Case No. 240 of 1997. There is a supporting affidavit in which the applicant explains how he is unable to pay for court fees as he is a poor person. Mr. Onderu for the Attorney General has opposed this application on the ground that even if the application had to be granted it would amount to an exercise in futility since the judgment to be appealed from did not comply with Order XX **RULE 3(1)** of the Civil Procedure Rules.

Mr. Chebii who was kind enough to bring the judgment of High Court to my attention stated that his client was not party to the suit and hence the application ought to be dismissed or struck out. In this application it is the desire of the applicant to pursue this matter as a pauper. He has indicated that due to his financial condition he would not be able to pay court fees. In the **High Court Civil Suit No. 34 of 1997** Kitale and 218 of 1996 at Eldoret, the parties were Ezekiel Ngare Wanjohi as the plaintiff and Leba Inyangala and Attorney General as defendants.

These are the parties in that suit in which the judgment of Nambuye, J. appears. At the moment this Court is not interested in the merits of the intended appeal but at the same time the applicant should not be allowed to drag into this dispute parties who are not involved. Hence the application to file appeal as a pauper is granted but the name of Douglas Kahara is struck out.

Dated and delivered at Nakuru this 20th day of February, 2001.

E. O'KUBASU

JUDGE OF APPEAL

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

