

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, SHAH & OWUOR, J.J.A)
CIVIL APPEAL NO. 52 OF 1998
BETWEEN

A.H. LALJIAPPELLANT
AND
B.H. LALJI 1ST RESPONDENT
D.H.NURANI..... 2ND RESPONDENT
SAMVIR MANAGEMENT SERVICES LIMITED 3RD RESPONDENT
ATTA (KENYA) LIMITED 4TH RESPONDENT

(Appeal from the Ruling and Order of the High Court of Kenya at Nairobi (Lady Justice Aluoch)
dated 19th February, 1998
in
H.C.C.C No. 3484 of 1995)

RULING OF OWUOR, J.A

I have had the advantage of reading and considering in draft the rulings of GICHERU and SHAH, JJ.A. I have no doubt in my mind and based on the numerous recent authorities of this Court; see Trimborn Agricultural Engineering Limited vs David Njoroge Kabaiko and Kenya Shield Security Limited Civil Appeal (Application) No. 274 of 1998, and Pepco Construction Company Limited vs Carter & Sons Limited Civil Appeal (Application) No. 80 of 1999, that a defective primary document, which the order filed herein is, cannot be amended or brought on record by way of a supplementary affidavit. In that regard it renders the whole appeal incompetent.

The order complained of contains an order that is in respect of another ruling that is not subject matter of the present appeal. Furthermore it contains an amendment whose origin is not ascertainable. Jowits Dictionary of English Law defines an amendment as:-

"the correction of some error or omission or the curing of some defect in judicial proceedings".

In a case like this one where it is in dispute as to who effected the amendment and at what stage of the proceedings, there has to be some evidence as to the authenticity of the amendment.

I would find merit in Mr. Oduol's objection to the order in the record of appeal and hold that the same is incurably defective, thereby rendering the appeal incompetent.

Dated and delivered at Nairobi this 7th day of April, 2000.

E. OWUOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR