



**IN THE COURT OF APPEAL OF KENYA**

**AT ELDORET**

**CIVIL APPEAL (APPLICATION) 79 OF 2010**

**BETWEEN**

**TRANS-NZOIA INVESTMENT**

**COMPANY LIMITED ..... APPLICANT/RESPONDENT**

**AND**

**JOSEPH WANAMBISI ..... 1<sup>ST</sup> RESPONDENT**

**ALFRED WANAMBISI ..... 2<sup>ND</sup> RESPONDENT**

**WEKESA WAMINILA ..... 3<sup>RD</sup> RESPONDENT**

**SAMMY WANJALA ..... 4<sup>TH</sup> RESPONDENT**

**IBRAHIM ONGARO ..... 5<sup>TH</sup> RESPONDENT**

*(Being an application to strike out record of appeal from the ruling and order of the High Court of Kenya at Kitale (Ombija, J) dated 11<sup>th</sup> November, 2009 and 16<sup>th</sup> December, 2009*

**In**

**H.C. C. Suit No. 59 of 2005)**

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**RULING OF THE COURT**

We think there is no merit in the motion before us filed by **Trans-Nzoia Investment Company**, the applicant hereinafter, asking us to strike out the notice of appeal and the record of appeal filed by Joseph Wanambisi and four other named persons, hereinafter the respondents. On 11<sup>th</sup> November, 2009, Ombija, J found the five respondents guilty of contempt of court and convicted them. On 16<sup>th</sup> December, 2009, the learned Judge ordered that each respondent was to pay a fine of Kshs.5000/- or in default be imprisoned for a term of six months. The respondents filed a notice of appeal against both orders on 17<sup>th</sup> December 2009, one day after the last order made on 16<sup>th</sup> December, 2009. Mr. Kiarie, learned counsel for the applicant, told us that two notices of appeal ought to have been filed, one against the order of 11<sup>th</sup> November, 2009 which should have been filed by 25<sup>th</sup> November, 2009 and a second notice against the order of 16<sup>th</sup> December, 2009.

The order of 11<sup>th</sup> November, 2009 was not complete; it was in fact perfected and completed on 16<sup>th</sup> December, 2009 when the learned Judge imposed sentences upon the respondents. It would be wholly artificial to separate the two orders in the manner Mr. Kiarie asked us to do and then strike out the record of appeal on that basis. Even if there was any irregularity in filing a single notice of appeal such an irregularity is now curable under and in accordance with the provisions of *sections 3A* and *3B* of the Appellant Jurisdiction Act which have introduced the concept of over-riding objective of litigation in our courts and it would clearly be contrary to the letter and spirit of the two sections to strike out the record of appeal so that the respondents to the motion can start all-over again. That would only increase the time taken by the litigation and costs thereof. We reject the applicant's motion dated and lodged in the Court on 11<sup>th</sup> May, 2010 and order that it be and is hereby dismissed. The costs of the dismissed motion shall be to the respondents in any event. Those are the orders of the Court.

Dated and delivered at Eldoret this 12<sup>th</sup> day of November, 2010.

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**S.E.O. BOSIRE**

.....

**JUDGE OF APPEAL**

**ALNASHIR VISRAM**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**



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