



REPUBLIC OF KENYA

IN THE HIGH COURT OF MOMBASA

CIVIL APPEAL NO.50 OF 2009

BERNASCONI FRANCESCOAPPLICANT

VERSUS

PETER NYONGESA.....RESPONDENT

R U L I N G

Today's date was given by this court as the date judgment will be delivered in this appeal. However in my perusal of the proceedings I found that on the date an order was made for parties to file their written submissions, that is 5th March 2015, the appellant was not represented.

1. On 5th March 2015 the court ordered that the written submissions would be highlighted before court on 30th April 2015.

2. On 30th April 2015 the respondent was represented but again appellant was not represented. It is on that day that today's date was given as the date for delivery of judgment. There was no evidence, and I could not find any in the court file, showing that the appellant's learned counsel was served with a hearing notice for 30th April 2015. It was therefore in error that a date of judgment was given on that day. If I proceeded to write the judgment I will deny the Appellant a hearing, which he is entitled to.

Accordingly I hereby set aside and vacate the order made on 30th April 2015. Parties shall take fresh date for highlighting their submissions if any.

It is so ordered.

Dated and delivered this 25th day of June 2015.

MARY KASANGO

JUDGE

25.6.2015

Coram

Before Justice Mary Kasango

C/Assistant- Kavuku

For Appellant:

For Respondent:

Court

Ruling delivered in their presence/absence in open court.

MARY KASANGO

JUDGE