



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 120 OF 2012

PETER MULAA MUTUNGA..... PLAINTIFF

VERSUS

RUBI PLASTICS INDUSTRIES LTD.....DEFENDANT

RULING

This matter was listed for directions when counsel for Respondent raised several issues principally that it was not ready for directions as there were missing documents including the Judgment order and decree of the lower court.

Proceedings from the 5th day of March, 2008 to 2009 were missing.

The grounds of opposition by the Respondent were similarly missing. It was the contention by the Respondent that the appeal should be struck out for non-conformity with order 42 rule 13 of the Civil Procedure Code which provides,

“(1) on notice to the parties delivered not less than twenty one days after the date of service of the memorandum of appeal, the appellant shall cause the appeal to be listed for giving directions by a Judge in chambers.

(2) Any objection to the jurisdiction of the appellate Court shall be raised before the Judge before he gives directions under this rule,

(3)

(4) Before allowing the appeal to go for hearing the Judge shall be satisfied that the following documents are on the Court record and that such of them as are not in the possession of either party have been served on that party, that is to say;

(a) The memorandum of appeal;

(b) The pleadings

(c) The notes of the trial magistrate at the hearing,

(d) The transcript of any official shorthand, typist notes, electronic recording or palantypist notes made at the hearing;

(e) All Affidavits, maps and other documents whatsoever put in evidence before the magistrate;

(f) the Judgment, order or decree appealed from and where appropriate the order (if any) giving leave to appeal”.

It is not seriously contested that some documents could be missing from the record of appeal but what is opposed is the application (orally) for the appeal should be struck out .

I find Counsels argument that the appeal should be struck out for failure to conform to the requirements of order 42 rule 13 to fly on the face of the provisions of section 1A and 1B of the Civil Procedure Act.

Section 1A (1) provides,

“The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the Civil disputes governed by the Act”.

1B (1) for the purpose of furthering the overriding objective specified in section 1A the Court shall handle all matters presented before it for the purpose of attaining the following aims -

“(a) the just determination of the proceedings.

(b) The efficient disposal of the business of the Court.

(c) the efficient use of available judicial and administrative resources.”

I am of the considered view that striking out the appeal would be in contravention of the overriding objectives of the Act.

The plaintiff is granted 14 days in which to comply with order 42 rule 13 of the Civil Procedure Code from the date of this ruling.

Ruling dated and delivered this 28th day of August, 2013.

.....

M. MUYA

JUDGE

28TH AUGUST, 2013

In the presence of:-

Counsel for the plaintiff (absent)

Counsel for the Defendant Kinyanjui