



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS'
CIVIL APPEAL NUMBER 218 OF 2007

DR FLORENCE MUSAU. APPELLANT

VERSUS

KENYA ANTI-CORRUPTION COMMISSION. RESPONDENT

(From the ruling and orders given by Ag. SPM Stella Muketi (Mrs.) at Milimani CMCC No. 11834 of 2005)

R U L I N G

There are two applications before this court for resolution. The Notice of Motion dated 24th January, 2011 seeks that this court takes directions in this appeal and proceeds to fix a hearing date of the appeal for disposal. The second Notice of Motion is dated 8th April 2011 and seeks the dismissal of the appeal on two grounds: - First, that the appeal was filed on 28th March 2007, seven to eight days out of time since the ruling appealed from was delivered on 20th February 2007. Second, that the Memorandum of Appeal was not accompanied with a certified copy of the ruling appealed from in accordance with the mandatory requirement of Order 42 Rule 13(4).

The Appellant's answers are that the ruling appealed from was delivered, not on 20th February, 2007 but the 27th February, 2007. In that case, she argues, the appeal was filed in time. Secondly, she states that even if she had not annexed the certified copy of the ruling and order appealed from to the memorandum of Appeal at the beginning, she later did so, and the same is the one dated 27th February 2007.

The latter argument brings out the really contention in these applications. The certified copies of the ruling in question, issued and certified by the Deputy Registrar show the date of its ruling as 20th February 2007 and not 27th February 2007. On the other hand the copy, filed in court and annexed to the Memorandum of Appeal by the Appellant shows an uncertified copy of the ruling whose date appears to be 27th February 2007 and yet tampered with, as if a person was imposing "27" on another date thereon which originally appears to have been "20".

The issue as to whether the appeal is competent or not on the basis of when the lower court was delivered was at one stage, placed before Okwengu, J (as she was then). She in her ruling dated 17th September, 2010, decided not to strike out the appeal on the ground that it was not certain when the lower

court ruling was delivered. This to me means that the benefit of doubt was given to the Applicant/Appellant. This is because the original handwritten ruling from which the proper date could be ascertained could not be traced. Obviously, one of the interest party must, with the co-operation of interested court officers, made sure the original handwritten ruling was not available.

I have carefully perused the court file records. I have formed the view that the Appellant, at least presently, wishes to prosecute the appeal, unlike in the past. The Respondent, on the other hand could have moved quicker to call off the bluff, especially after the orders made by Okwengu, J (as she was then). The issues must now be put to rest. Since the court's larger or overriding purpose is to salvage suits, so that parties have an opportunity to have their day in court, I have decided to take a similar course as that followed by Okwengu, J aforesaid. That is so, notwithstanding the fact that the Memorandum of Appeal, was accompanied only by copy of the Ruling or order appealed from, which is not certified as mandatorily required under Order 42 Rule 13(4) of Civil Procedure Rules. Otherwise the appeal was liable for striking out. In the circumstances, the Appellants will bear all the costs so far lost and thrown away by the Applicant/Respondent in respect of the whole appeal and the two applications, to date. I make the following orders.

ORDERS

- 1. That Appellant shall annex to the Memorandum of Appeal within 14 days, the certified copy of the ruling and orders dated 20th February, 2007.***
- 2. The Appellant shall fix the appeal for directions on the date of delivery of this ruling.***
- 3. The appeal shall be prosecuted on or before 31st July, 2012.***
- 4. In default of compliance of either of (1) or (3) or both above, this appeal shall automatically stand dismissed with no right of further extension.***
- 5. The costs of the two applications and the appeal will be borne in any event, by the Appellant on throw-away basis. They can be assessed immediately or at the finalization of the appeal.***

Dated and delivered at Nairobi this 14th day of March, 2012.

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D A ONYANCHA

JUDGE