

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal 53 of 2006

MBUNI DRY CLEANERS LTD.....APPELLANT

Versus

GEORGE MUGO KAGONDU.....RESPONDENT

RULING

The application filed by the Respondent in this appeal is by Notice of Motion dated 21st of March 2007. The application is brought under *Section 3A* of the Civil Procedure Act and *Order L Rule 1* of the Civil Procedure Rules and *Section 15* of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act. The application seeks the striking out of the Memorandum of Appeal filed by the Appellant herein. The Respondent in the appeal argues in support of that application that the judgment, which is the subject of the appeal hereof, was dated 25th May 2006. The Memorandum of Appeal hereof was filed on the 26th of June, 2006. The Respondent/Applicant argues that under *Section 15* of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act the Appellant had 30 days within which to appeal. According to the Respondent, the appeal therefore ought to have been filed on or before the 24th of June 2006. Counsel for the Respondent argued that there is an abuse of the process of the court because the Civil Procedure Rules which deal with enlargement of time do not apply to the Cap. 301. She further stated that the appeal is in respect of the hearing at the Business Rent Tribunal. That *Section 15* of Cap 301 provides that an appeal should be filed within 30 days. That the judgment having been delivered on the 25th of May 2006, the appeal was late by being filed on the 26th June 2006. That the 30 days that are provided under *Section 15* of Cap. 301 expired on the 24th of June 2006. She further argued that Tribunal as defined by *Section 2* of Cap 301 is not envisaged as a court. The counsel referred the court to *Rule 16* of the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) Forms and Procedure Regulations which provide specific orders, which applied to Cap. 301 imported from the Civil Procedure Act and Rules. Accordingly that no other rule can be imported to Cap. 301. In that regard counsel submitted that *Order 49* does not apply to Cap. 301 and so the 30 days provided for filing an appeal means exactly that, that is, 30 days from the date of judgment.

The application was opposed by the Appellant and in so opposing counsel relied on grounds of opposition dated 13th April 2007. Counsel's argument is that the Appellant herein filed the Memorandum of Appeal. That that appeal has not yet been admitted by the court and that indeed the Respondent has not been served with the Memorandum herein. It was his argument that an appeal needs to be admitted for hearing and once it is so admitted, then an application such as the one before court for striking out can be made. In response to this the Respondent argued that the Appellant had obtained stay pending appeal based on the Memorandum of Appeal. That it is that same Memorandum of Appeal the Respondent was seeking to strike out. The Appellant further argued that the appeal was filed within time, that as provided by *Order 49* of the Civil Procedure Rules the Appellant was within time, that is, the 30 days provided. He argued that under *Rule 2* of that same Order the day that the judgment was delivered is excluded from the computation. Further he also relied on *Rule 7* of that same Order. Counsel further argued that even between the dates of 26th May and 26th June 2006 there were a number of Sundays in between and without taking into account those Sundays the appeal was filed within time. The Appellant faulted the Respondent's reliance on the orders seen in the application. He argued that the Respondent should have relied on the Order which relates to appeals. He concluded by saying that he seeks the dismissal of the application.

The Respondent in the appeal argues that *Section 15 (1)* of Cap. 301 provides the period within which an

appeal may be preferred to the High Court from the Tribunal to be 30 days. The Respondent therefore argued that the judgment in this case having been delivered on 25th May 2006, the appeal ought to have been filed on the 24th of June. The Appellant in opposing the application relied on *Order 49 Rule 2* and *Rule 7*. Those rules provide as follows:

“2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day and Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of such limited time.

7. In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day.”

I am of the view that Cap. 301 is a complete Act in itself and one cannot import the provisions of the Civil Procedure Rules to it unless it is so provided for. *Rule 16* of that Act does not provide for the importation of *Order 49* of the Civil Procedure Rules. Further when one looks carefully at *Rule 7* of *Order 49* one finds that in the computation of time it relates to the days that are prescribed under the Civil Procedure Rules or the days that are ordered or directed by the court. That, therefore would mean that that particular rule cannot apply to the Tribunal as established under Cap. 301. Where then can one get to know how the time is to be computed under Cap. 301. The answer I believe lies in Cap. 2, The Interpretation and General Provisions Act. Specifically *Section 57* provides for the computation of time for the purpose of any written law. This section provides as follows:

“In computing time for the purposes of a written law, unless the contrary intention appears –

(a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) If the last day of the period is Sunday or a public holiday or all official non-working days, (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;

(c) Where an act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(d) Where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time

Having that section in mind, it would therefore seem very clearly that the 30 days provided under *Section 15* of Cap. 301 in computing the time, the day on which the judgment was delivered is excluded in the computation. What that means is that in computing the 30 days the 25th of May 2006 is excluded. The 30 days therefore would begin to run from the 26th May 2006. Accordingly the court's finding is that the 30 days period would be on the 26th June 2006. Therefore, I do find that the Memorandum of Appeal filed herein was filed within the time limitations stated in *Section 15* of Cap. 301. Accordingly the Respondent's application dated 21st March 2007 by Notice of Motion is hereby dismissed with costs to the Appellant. It is so ordered.

Dated and delivered at Nyeri this 8th day of June 2007.

MARY KASANGO

JUDGE