

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 283 OF 1997

FRANCIS OPIYO NGONGA PLAINTIFF

- Versus -

HOUSING FINANCE CO. KENYA LTD. DEFENDANT

R U L I N G

This is a notice of motion brought under Section 99 of the Civil Procedure Act and Order 50 Rule 1 of the Civil Procedure Rules. In it the Defendant seeks an order to amend the court record to reflect that Hayanga J. delivered a ruling in this case on the 5th day of July 2002 and not on the 4th December 2002. The application is supported by the affidavit of Kiarie Kariuki, counsel for the Defendant, in which he has deposed that his client had in an earlier application dated the 27th July 1998 sought a review of an earlier ruling delivered on the 5th June 1998. That application was argued before Hayanga J. on the 5th July 2001 and the Judge reserved the ruling to be delivered on notice. He further deposed that the ruling was not delivered until the 5th July 2002. A Notice of Appeal intimating the Defendant's desire to appeal against that ruling was filed on the 12th July 2002 and duly served upon counsel for the plaintiff on the 17th July 2002.

On the 4th December 2002 Mr. Kariuki said he received a letter from court notifying them that the ruling on the application was to be delivered on the 11th December 2002. On that day counsel from his office attended court and brought it to the Judge's attention that the ruling on the matter had been delivered on the 5th July 2002 and that the Judge agreed with him and did not deliver any ruling. However, on the 23rd January 2003 when he obtained a copy of the ruling from court it was dated 4th December 2002 and not the 5th July 2002 when it was delivered. Mr. Kariuki has annexed to his affidavit copies of correspondence exchanged with the Deputy Registrar confirming his averments.

The application was duly served upon the counsel for the plaintiff but no replying affidavit or grounds of opposition were filed and during the hearing nobody appeared to oppose it. I have perused the court record. There is nothing to show that the ruling was delivered on the 5th July 2002 or 4th December 2002. The handwritten ruling of the Judge is undated. Even the typed copy in the court file is also undated but the photocopy annexed to the supporting affidavit is dated 4th December 2002. Having considered the correspondence annexed to the supporting affidavit and in particular the Deputy Registrar's letter dated 15th July 2002 forwarding a copy of the Notice of Appeal to the Court of Appeal Nairobi, I am satisfied that the ruling was delivered on the 5th July 2002 and not on the 4th December 2002. Consequently I grant this application and order that the court record be amended to show that the ruling was delivered on the 5th July 2002 with no order as to costs.

DATED this 27th day of July 2004.

D.K. Maraga

Ag. JUDGE