



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELCA CASE NO. 357 OF 2017

GETRUDE OKOTH

(as the Administrator of the Estate of REUEL OKOTH ODERA – the deceased.....APPELLANT

VERSUS

KENYA ELECTRICITY TRANSMISSIONS COMPANY LIMITED.....RESPONDENT

***(AN APPEAL FROM THE JUDGMENT OF THE CHIEF MAGISTRATE'S COURT, KISUMU DELIVERED BY RESIDENT
MAGISTRATE M. AGUTU DATED 10TH DECEMBER 2015)***

RULING

1. By application dated 11/12/2017, the respondent seeks orders that the appeal be struck out with costs to the respondent.
2. The application is based on the grounds that **there is no Decree filed with the Record of Appeal. The Record of Appeal has in any event been filed out of time without the leave of the Honourable Court. The Appellant has neither applied for nor obtained the Decree since the Judgment herein on the 18th December 2015.**
3. According to the respondent, the Appellant has not listed the Appeal for directions as is mandatory and that the Appellant's Certificate of Delay is defective and is also of no relevance to the Appeal in any event.
4. The application is supported by the affidavit of Samuel Rambo the Senior legal officer with the applicant who states that the appeal was read on 18/12/2013 in the presence of the appellant's advocates and yet no decree has been obtained. It is alleged that the window of appeal closed on 10/2/2016. The appeal is bad in law as there is no decree. The certificate of delay is not relevant. The proceedings were collected on 24/4/2017 and the record of appeal was lodged on 17/7/2017.
5. In her reply, Getrude Okoth states that her advocate inadvertently forgot to apply for and file a decree as requirement under relevant Section of the law. However argues that decree includes judgment. The appellant invokes the provisions of the overriding objectives of the Civil **Procedure Act and Article 159 (2) of the Constitution of Kenya 2010**. She states that oversight of the advocate should not be visited on the client.
6. I have considered the application and relevant affidavits and rival submissions and do find that the appellants counsel has admitted the mistakes he made in the filing of the appeal and prays that his mistakes should not be visited on his client. This mistakes and blunders are far too many.
7. The Appellant is guilty of delay in applying to file a supplementary record of appeal as she waited until the respondent had filed the application to strike out the appeal on 13/6/2017 to file an application for leave to enlarge time for filing appeal herein out of time and leave to file a supplementary record of Appeal more than one year thereafter.
8. The appellant filed an affidavit with scanty explanation as to why she did not file the appeal in time.
9. The Appellant dwelt on the issues of law in her replying affidavit and does not explain her omissions.
10. The certificate of delay was in respect of the period upto 24/4/2017 that is a period of 198 days but does not cover the period between 24/4/2017 upto 17/7/2017 more than 80 days which are not explained.
11. I do find that the application to strike out the appeal being merited and the appeal is hereby struck out. Costs to the applicant. Orders accordingly.

A .O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 5TH DAY OF NOVEMBER, 2019.

In the presence of:

No appearance for the Appellant

No appearance for the Respondent

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE