



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 1947 OF 1999

CHIENI ENTERPRISES LIMITED.....PLAINTIFF

• **VERSUS -**

ATTORNEY GENERAL.....1ST DEFENDANT

BIVAC INTERNATIONAL LIMITED.....2ND DEFENDANT

RULING

1. The applicant, **BIVAC INTERNATIONAL LIMITED**, has invoked the provisions of Rule 83 of the Court of Appeal Rules, when asking this court to strike out the Notice of Appeal.
2. The Notice of Appeal was filed on 15th November 2010. Since that date the Respondent, **CHIENI ENTERPRISE LIMITED** has not yet filed the appeal.
3. From the record available to the court, the proceedings were available to the parties by 23rd July 2013. I say so because on that date the Learned Deputy Registrar of the High Court wrote to the parties, notifying them that the certified copy of the proceedings and of the Judgment were ready for collection.
4. Pursuant to Rule 82 of the Court of Appeal Rules, the appeal should have been instituted within 60 days from the date when the Notice of Appeal was lodged, provided that the Registrar of the High Court could have issued a Certificate of Delay, that would have resulted in the exclusion of the period of time required to prepare and deliver the proceedings to the appellant.
5. In order that the appellant can benefit from the Certificate of Delay, he should apply for the record of proceedings and the Judgment within 30 days of the Ruling or Judgment being appealed against. Secondly, the application for the said record of proceedings and the Judgment should be copied to the Respondent.
6. If an appeal to the Court of Appeal is not lodged within the prescribed time, the Notice of Appeal is deemed to have been withdrawn.
7. However, the Court may either on its own volition or upon an application by any party, make an order that the Notice of Appeal be deemed as withdrawn.
8. The Court envisaged under the Court of Appeal Rules is, however, not the High Court. It is the Court of Appeal, as spelt out in Rule 2 of the Court of Appeal Rules.

9. Therefore, this court does not have jurisdiction to determine the application premised on the rules governing the Court of Appeal. The application dated 9th June 2014 is struck out for want of jurisdiction.
10. However, although the application has been struck out I do not award the costs thereof to the Respondent. Instead, I order that each party should bear his own costs. The reason for that order on costs is that the Respondent did not answer the application. Secondly, the inactivity on the part of the Respondent is conduct that does not find any approval from this court. Indeed, if this court had jurisdiction, I would have had no hesitation in striking out the appeal.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd day of November 2014.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

.....for the Plaintiff.

.....for the 1st Defendant.

.....for the 2nd Defendant.

Mr. C. Odhiambo, Court clerk.