



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: GICHERU, SHAH & LAKHA, J.J.A.)**

**CIVIL APPLICATION NO. NAI. 48 OF 1998**

**BETWEEN**

**LEE SHEH POONG .....APPLICANT**

**AND**

**MWANIKI NJOROGE MAKAU**

**JOSIAH KIMEMIA .....RESPONDENTS**

**(Application for striking out Notice of Appeal and Record of Appeal in an intended appeal from the Judgment and Decree of the High Court of Kenya at Nakuru (Lady Justice S. Ondeyo) dated 19th May, 1997**

**in**

**H.C.C.C. NO. 455 OF 1995)**

**\*\*\*\*\***

**RULING OF THE COURT**

This is an application under rule 80 of the Rules of this Court to strike out the Notice of Appeal filed on 3rd June, 1997 but not served on the applicant in breach of rule 76 of the Rules of this Court. It is conceded by Mr. Nyakeno that the notice of appeal itself was out of time. An application for extension of time was dismissed by a single judge of this Court on 11th March, 1998 and there has been no reference from such Iatn orfdoelrl.ows that the application must succeed. Accordingly, the notice of appeal filed on 3rd June 1997 is struck out with costs including the costs of this application.

**Dated and delivered at Nairobi this 27th day of April,**

**1998. J.E. GICHERU .....**

**JUDGE OF APPEAL**

**A.B. SHAH .....**

**JUDGE OF APPEAL**

**A.A. LAKHA .....**

**JUDGE OF APPEAL I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR**