



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: AKIWUMI, TUNOI & LAKHA, J.J.A.)
CIVIL APPEAL NO. 293 OF 1997
BETWEEN
ELEGANT SERVICE STATION &
GARAGE LIMITEDAPPELLANT
AND
KOBIL PETROLEUM LIMITED
EXCELATHON LIMITEDRESPONDENTS

(An Appeal from the Judgment of the High Court of Kenya at Nairobi (Justice J.M. Khamoni)
dated 14th day of July, 1997

in

H.C.C.C. NO. 1501 OF 1989)

RULING OF THE COURT

This is an application to strike out the appeal under Rule 80 of the Rules of this Court.

Under the certificate of delay the copies of the proceedings were ready on 7th October, 1997 but the appeal was not filed until 19th December, 1997 well out of the prescribed time. There is no leave for any extension of time.

Secondly, the record does not contain all the exhibits produced at the trial. This is in breach of the mandatory provisions of Rule 85(1)(h) of the Rules and this is an incurable and fatal omission rendering the appeal incompetent.

Accordingly, the appeal is struck out with costs including the costs of the application.

Made and delivered at Nairobi this 19th day of May, 1998.

A.M. AKIWUMI

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR