



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: KWACH, TUNOI & OWUOR, J.J.A.)
CIVIL APPLICATION NO. NAI. 167 OF 1998

BETWEEN

MOMBASA DEVELOPMENT LIMITED APPLICANT

AND

1. CARGILL EAST AFRICA LTD. 1ST RESPONDENT

2. KENYA TRANSIT AND TRADING CO. LTD. 2ND RESPONDENT

3. J. B. MAINA & COMPANY LTD. 3RD RESPONDENT

(Application to strike out the Judgment of the High Court of Kenya at Mombasa (Justice Mbogholi) dated 30th day of January, 1996

in

H.C.C.S. NO. 146 OF 1993)

RULING OF THE COURT

By this motion the applicant, the first respondent in the appeal, seeks two orders. First, to strike out the notice of appeal lodged by the appellant on the 1st day of February, 1996 for failure to comply with rules 74 and 76 of the Rules of this Court; and, secondly, to strike out Civil Appeal No. 312 of 1997.

This application is not, in earnest, opposed by the appellant. Its counsel, Mr. Wasuna, concedes that the notice of appeal actually contravened the said rules and; moreover, the record of appeal was lodged in this Court out of time and without the requisite leave. The application must therefore succeed. Consequently, the appeal is fatally defective and is incompetent. It is hereby ordered struck out. The costs of this application and of the appeal are awarded to the applicant.

Made at Mombasa this 17th day of July, 1998.

R. O. KWACH

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR