

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

(Coram: Kwach, Pall & Owuor, J.J.A.)

CIVIL APPLICATION NO. NAI. 180 OF 1998

BETWEEN

DAVID KAHIRA

MUNGAI.....APPLICANT

AND

GRACE WAIRIMU

MWANGI.....RESPONDENT

**(Application to strike out the Notice of Appeal in an
intended appeal from the decision of the High Court of
Kenya
at Nakuru (Lady Justice Nambuye)**

in

H.C.C.C. NO. 2 OF 1989)

RULING OF THE COURT

Paragraph 4 of the advocate for the applicant's affidavit in support of the motion says that he was served with the notice of appeal on 31st May, 1994. That means that the notice of appeal was served outside the period of seven days. It is true that this particular matter was not made a ground for the striking out the notice of appeal.

Service of notice in accordance with rule 76 within a period not exceeding seven days is a mandatory provision. Mr. Kagucia asks for an adjournment to enable him to file an affidavit in reply on this point but it would not help the matter. At the back of the notice of appeal the date of receipt is stated as 31st May, 1994 whereas the notice was filed on 18th May, 1994. This is a fundamental mistake. On the evidence before us we are satisfied that the notice was not served in accordance with rule 76. That makes a notice of appeal incompetent and we strike it out with no order as to costs.

Made and delivered at Nakuru this 22nd day of September, 1998.

R.O. KWACH

JUDGE OF APPEAL

G.S. PALL

JUDGE OF APPEAL

E. OWUOR

JUDGE OF APPEAL

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

DEPUTY REGISTRAR