



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL  
AT NAIROBI**

**CIVIL APPLICATION NO. NAI. 67 OF 1997**

**J. B. MAINA AND  
COMPANY LIMITED  
.....APPLICA  
NT**

**VERSUS**

**1. MOMBASA  
DEVELOPMENT  
LIMITED .....1  
ST RESPONDENT**

**2. CARGIL EAST  
AFRICA  
LIMITED .....2  
ND RESPONDENT**

**3. KENYA TRANSIT  
AND TRADING  
COMPANY LIMITED  
....3RD  
RESPONDENT**

(An application for extension of time to serve Notice of  
Appeal from the judgment of the High Court of Kenya  
at Mombasa (Hon. Mr. Justice M. Mbogholi) dated the  
30th of January, 1996

in

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

\*\*\*\*\*

**RULING**

The applicant, J. B. Maina and Company Limited, by this Notice of Motion, seeks orders that the Notice of Appeal dated 31st January, 1996 and filed in the superior court at Mombasa on 1st February, 1996 was duly and properly served by ordinary post upon the Managing Director of the first respondent, Mombasa Development Limited, and, in the event of it being held in the contrary that service was bad, the time for service of the Notice of Appeal on the first respondent be extended to 16th February, 1996 when a copy of the Notice of Appeal was personally served upon the first respondent's Managing Director.

Judgment, the subject matter of the intended appeal, was delivered on 30th January, 1996. On 1st February, 1996 a Notice of Appeal was duly lodged by the applicant. On the following day it posted a copy thereof to the first respondent. It is not in dispute that the first respondent has not in all the pleadings, correspondents, affidavits and documents disclosed its physical address. Its only address is given as P. O. Box 88892, Mombasa. Its registered office is unknown. It is trite that every company incorporated in Kenya must have a registered office which establishes its domicile and is also the address

at which the company's statutory books must normally be kept and to which notices and other communications can be served or sent.

The applicant being desirous of appealing was handicapped by lack of the first respondent's physical address and hence the desperate despatch of the Notice of Appeal by post.

Under rule 17(1) of the Rules, there being no directions given by this court as to the mode of service, personal service in the present instance must be effected by serving the Notice of Appeal on a director, manager or secretary of the first respondent. As the first respondent has in effect actually denied receiving a copy of the Notice of Appeal, I am compelled in the absence of a postal certificate to hold that the first Notice of Appeal herein may not have been properly served on the first respondent. It is not in dispute that copies of Notice of Appeal were served on the other respondents.

The applicant has shown that it is keenly desirous of appealing against the judgment of the superior court. It has not been guilty of laches or of any inordinate delay. Realising that service might be defective it vehemently and extensively tracked the first respondent's managing director to his residence.

Despite Mr. K'owade's very persuasive submissions in opposition to the application, I am satisfied that this is a case in which in the exercise of my discretion judicially I should grant the application. The time for service of the Notice of Appeal on the first respondent is extended to 16th February, 1996. So that this case is finally disposed of, I order that the record of appeal be filed within 30 days hereof and thereafter be served on all the respondents according to the rules. The applicant will pay to the first respondent the costs of the application in any event.

Dated and delivered at Nairobi this 24th day of June, 1997.

P. K. TUNOI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR