

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, AKIWUMI & SHAH, J.J.A.)

CIVIL APPLICATION NO. NAI 52 OF 1997

BETWEEN

1. WILLIAM JUMA

2. MICHAEL ODORI APPLICANTS

AND

1. KENYA BREWERIES LIMITED

2. NJENGA KONGO RESPONDENTS

(Application to strike out a Notice of Appeal filed on
22/6/1993 in an intended Appeal from a Judgment of the
High Court of Kenya at Nairobi (Justice Githinji) dated
9th June, 1993

in

H.C.C.C. NOS. 3514 AND 3515 OF 1985)

RULING OF THE COURT

The present application is to strike out the respondent's notice of appeal on the ground that they have failed to take an essential step in the appeal process namely, to file the record of appeal in time. In support of this, the applicants in their affidavit in support of their application, referred to the letter of the respondents requesting copies of the proceedings and judgment dated 18th June, 1993, some nine days after judgment was delivered to show that that is all that the respondents had done upto now, to pursue the intended appeal.

The time position would seem to be otherwise. Since the delivery of the judgment, it is true that stay of extension has been obtained, but the respondents have done all that they could possibly do to obtain the proceedings which the applicants cannot deny, had "been permanently missing" until recently. We fear that the orders that commands itself to us is that the application be dismissed. The respondents will have their costs of this application.

Dated and delivered at Nairobi this 10th day of June, 1997.

R. O. KWACH

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JUDGE OF APPEAL

A. M. AKIWUMI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.