



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, AKIWUMI & LAKHA, JJ.A.)
CIVIL APPLICATION NO. NAI 362 OF 1996
BETWEEN
FREIGHT FORWARDERS KENYA LIMITED.....APPLICANT
AND
THE OFFICIAL RECEIVER AND LIQUIDATOR.....RESPONDENT
(Application to strike out the Notice of Appeal of an intended
appeal from a Ruling of the High Court of Kenya at
Nairobi (Justice Shah) dated 23rd June, 1994
in
H.C.WINDING UP CAUSE NO. 6 OF 1981)

RULING OF THE COURT

This is an application under rule 80 of the Court of Appeal Rules to strike out the notice of appeal lodged by the respondent on May 20, 1996. The respondent's Advocate applied for copies of proceedings and ruling of the Superior Court on June 29, 1994. On July 8, 1996, the applicant's Advocate wrote to the respondent's Advocate to inquire of the progress made towards filing of the record of appeal. No appeal having been lodged, the present application to strike out the notice of appeal was filed on November 27, 1996.

Mr. Gatonye, for the respondent, filed his own affidavit in reply and deponed that he made diligent efforts himself and by his chief court clerk in his office to obtain copies of the proceedings and the ruling. Apart from many personal visits made by himself to the High Court registry, he also had written letters on November 20, 1996 and February 5, 1997. Eventually, these copies were ready and available for collection to him on September 5, 1997 and collected on the same day as is certified in the Certificate of Delay produced from the Bar, without objection. Mr. Gatonye, therefore, submitted that, in the circumstances, time to file an appeal had not lapsed and he prayed for an order that the same be filed within 15 days.

Upon a careful consideration of all the facts placed before us, we are satisfied that the respondent at all times made diligent efforts to obtain copies of the proceedings and ruling without any laxity on its part

and at all times evinced a serious intention to pursue its right of appeal.

In the result and, in the face of the Certificate of Delay now made available, we are satisfied that the application to strike out must fail. Accordingly, the notice of motion dated November 15, 1996 is dismissed with costs. The respondent is ordered to file its appeal on or before October 6, 1997.

Dated and delivered at Nairobi this 18th day of September, 1997.

J. E. GICHERU

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JUDGE OF APPEAL

A. M. AKIWUMI

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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