



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM: KWACH, LAKHA, J.J.A. & BOSIRE, AG.J.A.)**  
**CIVIL APPLICATION NO. NAI. 204 OF 1999**  
**BETWEEN**

**A.H. LALJI ..... APPLICANT**

**AND**

**B.H. LALJI ..... RESPONDENT**

**(Application to strike out Notice of Appeal dated 4th October,**

**1996 in an intended appeal from a Ruling of the High  
Court of Kenya at Nairobi (Justice Juma) dated 25th  
September, 1996**

**in**

**H.C.C.C. NO. 3848 OF 1995)**

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**RULING OF THE COURT**

We have before us an application by way of a notice of motion expressed to be brought under rule 80 of the Rules of this Court. It seeks an order that the notice of appeal herein dated 4th October, 1996 be struck out on the ground that the respondent had failed to file an appeal within the prescribed time. It is supported by an affidavit of the applicant's advocate.

The superior court delivered its ruling from which it is intended to appeal on 25th September, 1996 and on 8th October, 1996 the respondent's advocate served upon the applicant's advocates the notice of appeal against the said decision. By its letter dated 4th March, 1997 from the registry of the superior court, the respondent's advocate was notified that copies of the proceedings were ready for collection. That notwithstanding, no appeal has been filed to date.

In opposing the application, the respondent's advocate filed his affidavit and deposed that the file in the superior court went missing. This was the main basis upon which the application was resisted. It is, however, clear from the ruling of the Senior Deputy Registrar delivered on 15th May, 1997, that Mr. Wagara, advocate for the respondent, stated from the Bar that he was notified on 4th March, 1997 by the registry to collect the proceedings. He conceded, significantly, that the court file was not available to them until it surfaced on 30th April, 1997. The time to file the appeal expired on 3rd May, 1997 or 29th June, 1997 at the latest. No appeal having been filed to date, the intended appeal is now well out of time.

We are satisfied that there is no merit in the opposition of this application to strike out. The application is, therefore, allowed. The notice of appeal dated 4th October, 1996 and filed on 8th October,

1996 is accordingly hereby struck out with costs of the application to the applicant.

Dated and delivered at Nairobi this 3rd day of October, 1997.

R.O. KWACH

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

S.E.O. BOSIRE

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AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR