



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OMOLO, AKIWUMI & TUNOI, JJ.A.)**

**CIVIL APPEAL NO. 42 OF 1995**

**BETWEEN**

**AUGUSTINO MWAI.....APPELLANT**

**AND**

**OKUMU NDEDE.....RESPONDENT**

**(Appeal from the judgment of the High Court of Kenya at Nairobi (Justice Dugdale) dated the 27<sup>th</sup> day of October, 1994**

**in**

**H.C.C.C. NO. 5478 OF 1991)**

**\*\*\*\*\***

**RULING OF THE COURT**

The application to strike out the appeal must succeed. It is conceded by the appellants that the Notice of Appeal was served on the respondent out of time and that upto now, no application has been made to extend the time within which service of the Notice of Appeal may be served on the respondent. It is also conceded that the respondent was not served with the record of appeal within time and that on the 19<sup>th</sup> October, 1995, and without leave, the record of appeal was posted to the respondent. This will not do. It is also note worthy that the application to strike out was filed and served as far back as in June, 1995. The application as we have intimated, succeeds with costs for the respondent. It is so ordered.

Dated and delivered at Nairobi this 25<sup>th</sup> day of October, 1995.

**R. S. OMOLO**

.....

**JUDGE OF APPEAL**

**A. M. AKIWUMI**

.....

**JUDGE OF APPEAL**

**P. K. TUNOI**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**