



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

(Coram: Madan and Kneller, JJ A and Chesoni, Ag. J A) CIVIL APPEAL NO. 32 OF 1982)

civ app 32 of 82

BETWEEN

ANDREW A APIYO APPELLANT

AND

MICHAEL M O MASHERE RESPONDENT

(Appeal from the Ruling of the High Court of Kenya at Eldoret (Mbaya, J) dated 7th May, 1982 in

Civil Case No. 111 of 1976

RULING OF THE COURT

The respondent objects to this appeal being prosecuted on the grounds that he was not served with Notice of Appeal within time which was filed on 14th May, 1982 and should have been served within 7 days (rule 76 (1)); secondly, the respondent was also not served with the Memorandum of Appeal and the record of Appeal within seven days after lodging it on 14th July, 1982 (rule 87 (1)).

Mr Kamau who appears for the appellant concedes that the two aforementioned rules were not complied with as two documents were served on the respondent as late as 30th October, 1982. There is also a breach of rule 85 (1) (h) as much as certified copy of the order sought to be appealed against is not included in the Record of Appeal. Mr Kamau has applied for extension of time so that Notice of Appeal and the Memorandum of Appeal shall be deemed to have been served within time. He has also applied extension to file the order out of time.

In order to succeed Mr Kamau has to bring himself within rule 84 by showing sufficient cause to explain why the required steps were not taken timeously. He is gallant enough to admit freely that the lapses which occurred happened due to omission on his part. That is not sufficient cause. We are therefore unable to accede to his request.

The appeal is ordered to be struck out as incompetent, with costs to the respondent. Order accordingly.

Dated at Nakuru this 5th day of October, 1983.

C B MADAN

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JUDGE OF APPEAL

A A KNELLER

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JUDGE OF APPEAL

Z R CHESONI

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AG. JUDGE OF APPEAL