



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CIVIL APPEAL CASE NO. 04 OF 2018

JOHN KAMAKIA NTHATU PLAINTIFF

VERSUS

FESTUS KITHINJI NJAGI DEFENDANT

RULING

1. The plaintiff in this matter, on 6th April, 2018, filed a Notice of Appeal which is in the following format:

NOTICE OF APPEAL

Take notice that John Kamakia Nthatu the appellant herein being dissatisfied with the judgment of Hon. Messa Principal Magistrate at Marimanti Law Courts in Civil Case No. 45 of 2018 on the 23.3.2018 intends to appeal to the high court of Kenya at Chuka against the whole of the said decision.

The address of service for the appellant shall be M/S Kevin Nyenyire & Co. Advocates P. O. Box 2702-60200 Meru, Murerwa House 1st Floor Suite 12B.

IT IS INTENDED TO SERVE COPIES OF THIS NOTICE UPON:

Kijaru Njeru & Co. Advocates

DATED AT MERU THIS 5TH DAY OF APRIL, 2018

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KEVIN NYENYIRE & CO.

ADVOCATES FOR THE APPELLANT

2. Section 79 G of the Civil Procedure Act gives the timeline within which an appeal should be filed before this court. It says:

“79 G. Time for filing appeals from subordinate courts

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

“Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

3. In this matter the Notice of Appeal was filed on 6th April, 2018 and no other action was taken. On 13th July, 2018, through registered post the appellant and his advocate were given notice to come to court for directions on 24th July, 2018. They did not come to court.

4. It seems to me that a Notice of Appeal does not constitute an appeal. It also seems to me that the spirit of the law envisaged by the Civil Procedure Rules is that an appeal is deemed as filed when the appellant files a Memorandum of Appeal. It is only in the Court of Appeal that

an appeal is deemed to have been filed under rules of that court when a Notice of Appeal has been given.

5. I find that the plaintiff has not properly filed an appeal. This court is required through the understanding between it and the judiciary that appeals should be heard and determined within 360 days of their being filed. It is about three and a half months since the apposite Notice of Appeal was filed. As I have found that no appeal exists in this matter, the Notice of Appeal filed in this matter is deemed to be of no useful purpose and of no consequence.

6. In the circumstances, this file should be marked as closed and I order that this matter be removed from the register of pending appeals at Chuka ELC Court.

7. It is so ordered.

Delivered in open Court at Chuka this 24th day of July, 2018 in the presence of:

CA: Ndegwa

P.M. NJOROGI

JUDGE