



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, AZANGALALA & KANTAI JJ.A)

CIVIL APPLICATION NO. 83 OF 2014

BETWEEN

SHADRACK ABRAHAM KISONGOCH.....APPLICANT

AND

KENYA AIRPORTS AUTHORITY.....RESPONDENT

(An Application to strike out the Notice of Appeal dated 23rd November 2014 and filed

on 24th September 2014 being an intended appeal from the judgment of the

High Court of Kenya at Kisumu, Industrial Court (Wasilwa, J.)

dated 17th September, 2014

in

INDUSTRIAL CAUSE NO. 20 OF 2014)

RULING OF THE COURT

1. This is an application brought under Rules **42(1)**, **43(1)**, **83** and **84** of the Court of Appeal to strike out the respondent's notice of appeal dated 23rd September, 2014 and lodged in court the following day.
2. The application is premised on the ground that the record of appeal filed pursuant to that notice of appeal was filed out of the prescribed period without leave of court.
3. According to counsel for the applicant, the High Court proceedings having been ready for collection on 31st October 2014, even after excluding the Christmas vacation when, as stated in **Order 50 Rule 4** of the **Civil Procedure Rules**, time does not run for purposes of filing pleadings in civil cases, the respondent should have filed its record of appeal by 22nd January 2015.
4. The proviso to **Rule 82(1)** of the **Court of Appeal Rules** read together with sub-rule (2) of that Rule provides that where the letter bespeaking of proceedings is filed in court within thirty days of the date of the decision sought to be appealed and a copy thereof is served upon the respondent, as was

done in this case, for purposes of filing the record of appeal, time starts to run from the date of "delivery" of the proceedings.

5. In this case, as stated on the certificate of delay a copy of which is annexed to the replying affidavit, proceedings were delivered to counsel for the respondent on 19th November, 2014. In the circumstances, and excluding the 2014 Christmas vacation, the last date for filing the record of appeal in this case was 9th February, 2015 but the same was filed on 21st January, 2015. Counsel for the applicant himself conceded that if we find, as we have, that time started running on 19th November 2014, then the record in this appeal was filed in time. Consequently we find no merit in this application and we accordingly dismiss it with costs.

DATED and delivered at Kisumu this 14th day of May, 2015.

D.K.MARAGA

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JUDGE OF APPEAL

F. AZANGALALA

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR