



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OKWENGU, G.B.M. KARIUKI & SICHALE, JJ.A)

CIVIL APPEAL NO. 115 OF 2015

BETWEEN

KYULE MAKAU APPELLANT

AND

DOMINIC MUSEI IKOMBO RESPONDENT

(Being an application to strike out the Notice of Appeal dated 25th April, 2015 filed on 27th April, 2015 and served on 4th May, 2015 and the Record of Appeal dated 13th May, 2015 and lodged on 13th May, 2015)

in

CIVIL APPEAL NO. 115 OF 2015)

RULING OF THE COURT

The applicant **KYULE MAKAU IKOMBO** filed a Notice of Motion dated 11.6.2015. He sought the following orders:

- “1. THAT the Notice of Appeal filed in the Superior Court’s Registry at Nairobi on 27th April, 2015 and served on the Applicant’s Advocates on 4th May, 2015 be struck off.***
- 2. THAT the Record of Appeal filed on 13th May, 2015 and served on 14th May, 2015 be struck off.***
- 3. THAT costs of these proceedings be paid to the Respondent herein.”***

The motion was supported by the affidavit of **KYULE MAKAU** sworn on 11th June, 2015. Briefly, he deposed that the respondent filed Civil Application No. 261 of 2014 seeking an order of extension of time to file and serve the Notice of Appeal and the Record of Appeal; that on 17th April, 2015 the respondent was granted leave to file and serve the Notice of Appeal within 14 days of the ruling and to file and serve the Record of Appeal within 30 days of the ruling; that the respondent filed the Notice of Appeal on 27th April, 2015 and served it on 4th May, 2015; that the Notice of Appeal was served outside the 14 days; that

the record of appeal filed on 13th May, 2015 and served on 14th May, 2015 was incompetent as it was filed without leave.

In response, **FRANCIS MWANZA MULWA**, the respondent's counsel swore an affidavit dated 22nd September, 2015. He deposed that the 14 days period expired on 1st May 2015 which was a public holiday and hence excluded under Rule 3(b) of this Court's Rules; that the Notice of Appeal was served on 4th May, 2015 which was within time; that the Record of Appeal was lodged on 13th May, 2015 and served on 15th May, 2015 well within the 30 days granted by the court Rule 3(b) of this Court's Rules provide as follows: ***"Any period of time fixed by these Rules or by any decision of the court for doing any act shall be reckoned in accordance with the following provisions:-***

a. -

b. ***If the last day of the period is a Sunday or a public holiday (which days are in this rule referred to as excluded days) the period shall include the next following day, not being an excluded day."***

The period of 14 days from 17th April 2015 expired on 1st May, 2015, which was a public holiday, to wit, Labour Day. In computation of time under Rule 3 (b) of this Court's Rules, a public holiday which in this case was on Friday is excluded from the computation of time. The following dates, i.e 2nd and 3rd of May, 2015 were Saturday and Sunday respectively, and were also excluded in the computation of time. That being the case, the next working day was on 4th May, 2015, and hence the last day of the 14 days of the ruling delivered on 17th April, 2015 was 4th May, 2015. The Notice of Appeal was filed on 27th April, 2015 well within the 14 days ordered by the court and served on 4th May, 2015 which was also within time. Hence, the Record of Appeal which was filed on 13th May, 2015 and served on 14th May, 2015 was not incompetent as there was no need to seek leave as the Notice of Appeal was filed and served within the stipulated period.

We find no merit in this application. It is dismissed with costs to the respondent.

Dated and Delivered at Nairobi this 20th day of November, 2015.

H. M. OKWENGU

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JUDGE OF APPEAL

G.B.M. KARIUKI

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR