



IN THE COURT OF APPEAL

AT NYERI

(CORAM: VISRAM, KOOME, ODEK J.J.A.)

CIVIL APPLICATION NO. NYR. 1 OF 2014

BETWEEN

WILLIAM MWANGI NGURUKI.....RESPONDENT

AND

BARCLAYS BANK OF KENYA LTD.....APPELLANT

An application seeking the striking out of the Notice of Appeal dated 14th January, 2013, appealing against the decision of the High Court of Kenya at Embu (Ongundi, J.) dated 18th December, 2012

in

H. C. C. No. 51 of 1997)

RULING OF THE COURT

Before us is an application dated 14th January, 2014 seeking that the Notice of Appeal filed herein on 14th January, 2013 be struck out on the ground that:

“no appeal lies against the Respondent/Judgment-Debtor having failed to file its Record of Appeal within sixty (60) days from 14th January, 2013 after service of the Notice of Appeal as provided by Rule 82 of the Court of Appeal Rules, 2010.”

The application is brought under Rule 84 of this Court's Rules. That Rule states as follows:

“A person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days from the date of service of the notice of appeal or record of appeal as the case may be.”

The proviso to that Rule clearly stipulates that an application to strike out a Notice of Appeal, such as the application before us, shall not be brought after the expiry of thirty (30) days from the date of service of the Notice of Appeal.

The Notice of Appeal herein was filed and served on 14th January, 2013, according to the first ground in support of the application.

This application was filed on 17th January, 2014, one year after the notice of appeal was served on the Respondent/Applicant. The applicant's learned counsel, Mr. E. T. Gaturu admitted that he had neither applied for, nor obtained, leave to file this application out of time.

Accordingly, and on that ground alone, the application dated 14th January, 2014, is incompetently before us, and is struck out with costs to the Appellant/Respondent.

Dated and delivered at Nyeri this 31st day of March, 2014.

ALNASHIR VISRAM

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JUDGE OF APPEAL

MARTHA KOOME

.....

JUDGE OF APPEAL

J. OTIENO-ODEK

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR