



IN THE COURT OF APPEAL

AT NYERI

(CORAM: VISRAM, KOOME & ODEK, JJ.A.)

CIVIL APPLICATION NO. NAI. 321 OF 2012(NYR. 24/2012)

JULIUS KIRUMA KARIUKI.....APPLICANT

VERSUS

NAHASHON MWANGI MBOGO.....1ST RESPONDENT

PETER GITHINJI.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

(Application to strike out a Notice of Appeal from the Judgment of the High Court of Kenya at Nyeri (Makhandia, J.)

dated 18th June, 2009

in

H.C.C.C. No. 64 of 2003)

RULING OF THE COURT

On 18th day of June, 2009, Makhandia, J. (as he then was), delivered a Judgment in favour of the applicant in HCCC No 64 of 2003. Being dissatisfied by the said Judgment, the 2nd and 3rd respondents filed a Notice of Appeal on 22nd day of June, 2009. The Notice of Appeal was served upon the applicant and he accordingly moved to file a notice of address of service. Thereafter, the firm of Muchoki Kangata & Company Advocates filed a notice of change of Advocates on 16th July, 2010 and filed an application seeking for orders of stay of execution which were granted on 24th September, 2010. The respondents' advocates were notified vide a letter dated 14th September, 2012 written by the Deputy Registrar of the High Court, that the Proceedings and Judgment in respect of **High Court Civil Case Number 64 of 2003**, were ready for collection upon payment of the sum of Ksh. 1,160/= . Under the provisions of Rules, 82 of the Court of Appeal, the respondents were supposed to lodge the record of appeal within 60 days which lapsed.

By a Notice of Motion dated 6th December, 2012, the applicant sought for orders that the Notice of Appeal filed on 22nd June, 2009 be struck out for reasons that the respondent failed to take essential steps

to file an appeal given that the record of proceedings was made available for collection from 14th September, 2012. This application is supported by the affidavit of Albert Simiyu Kuloba, sworn on 6th December, 2012.

The respondents did not attend Court although they were duly served with the application and the hearing notice. They also did not file any response thereto.

We have considered the submissions by counsel as well as the matters stated in the supporting affidavit. These matters are not controverted, the respondents were served with the application, notified of the hearing date, and also served with a letter advising them that the proceedings were ready for collection. Under **Rules 82(1)** of this **Court's Rules**, the appeal ought to have been filed 60 days from the 14th day of September, 2012.

The respondents have not filed any record of appeal and there being no explanation, for failure to take essential steps to file the record of appeal we allow the application and hereby strike out the Notice of Appeal pursuant to the provisions of **Rule 84** of this **Court Rule's**. The applicant shall have the cost of the application.

Dated and Delivered at Nyeri this 20th day of June, 2013

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

M. K. KOOME

.....

JUDGE OF APPEAL

J. OTIENO – ODEK

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR