



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU

CORAM: O’KUBASU, NAMBUYE & OKWENGU, J.J.A.

CIVIL APPLICATION NO. NAI. 215 OF 2010 (UR.12/2010)

BETWEEN

KENYA AGRICULTURAL RESEARCH INSTITUTE (KARI).....APPLICANT

AND

CAROL CONSTRUCTION CO. LTD.....RESPONDENT

(Application for striking out a notice of appeal from the ruling and order of the High Court of Kenya at Nakuru (Kimaru, J) dated 30th June, 2005

in

H.C.MISC. APPL. NO. 99 OF 2004)

RULING OF THE COURT

This is an application brought under **Rules 42** and **80** of the Court of Appeal Rules seeking an order that the notice of appeal dated 5th July, 2004 and lodged on 7th July, 2005 be struck out with costs.

When the application came up for hearing on 22nd February, 2012 *Mr. L.O. Oluoch* the learned counsel appeared for the applicant but there was no appearance for the respondent. Since the respondent’s advocates had been served with the hearing notice we allowed *Mr. Oluoch* to proceed with the application.

In his submissions *Mr. Oluoch* relied on the affidavit of *James Mbaluku*, who described himself as an Administrative Officer of the Kenya Agricultural Research Institute (KARI) and on the following grounds:-

“a. Some essential step in the proceedings has not been taken in that the record of appeal has not been filed five years following the filing of the Notice of Appeal;

b. Due to the lapse of time before filing the Record of Appeal, it is apparent that the respondent is not interested in proceeding with the intended appeal.

c. The respondent has filed another appeal arising from the same matter being Civil Appeal No. 33 of 2005 – NAKURU.”

Mr. Oluoch further submitted that under **Rule 82** of the Court of Appeal Rules the record of appeal

should have been filed within 60 days.

From the record the notice of appeal dated 5th July, 2004 was lodged on 7th July, 2005. It seems no steps have been taken to institute the intended appeal. **Rule 82(1)** of this Court's Rules provides:-

“Subject to rule 115 an appeal shall be instituted by lodging in the appropriate registry within sixty days of the date when the notice of appeal was lodged.”

It would appear that the matter remained dormant until 13th September, 2010 when this application to strike out the notice of appeal was filed in this Court.

From the foregoing there can be no doubt that the respondent lost interest in its appeal. Therefore this application cannot be resisted. We accordingly allow the application and order that the notice of appeal dated 5th July, 2004 and lodged on 7th July, 2005 be and is hereby struck out with costs to the applicant.

DATED and DELIVERED at NAKURU this 24th day of FEBRUARY, 2012.

E.O. O’KUBASU

.....
JUDGE OF APPEAL

R.N. NAMBUYE

.....
JUDGE OF APPEAL

H.M. OKWENGU

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR