



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: WAKI, ONYANGO OTIENO & VISRAM, JJ.

CIVIL APPEAL (APPLICATION) NO. 288 OF 2010

BETWEEN

KIPSIRGOI INVESTMENTS LTDAPPELLANT/RESPONDENT

AND

KENYA ANTI-CORRUPTION COMMISSION..RESPONDENT/APPLICANT

***(Application to strike out an appeal from the Ruling and Order of the High Court of Kenya at Eldoret
(Mwilu, J)***

dated 7th July, 2010

in

H. C. C. No. 61 of 2008)

RULING OF THE COURT

This is an application by way of notice of motion brought under **Rules 80 and 42** of the Court of Appeal Rules (the Rules) in which the applicant (respondent in the appeal) seeks an order that the record of appeal lodged on 22nd October, 2010 be struck out on the ground that the same was lodged out of time, and without leave of the Court.

According to the applicant, the record should have been filed by 13th September, 2010, that is within 60 days of the filing of the notice of appeal. There is no dispute that the notice of appeal was indeed filed on time on 13th July, 2010.

The record of appeal was lodged on 22nd October, 2010. According to the respondent, that was within time given that the court proceedings were ready for collection on 28th September, 2010. The respondent has annexed the certificate of delay to confirm these facts. However, the applicant's case is that it was never served with the letter requesting for a copy of the proceedings, as is required by the Rules, and, accordingly, the record of appeal should have been filed by 13th September, 2010 – within 60 days of the filing of the notice of appeal. In answer, the respondent swears that indeed the letter requesting for a copy of the proceedings was attached to the notice of appeal and was duly served on the applicant on 16th July, 2010.

We have verified the allegations by the respondent from the depositions on record, and are satisfied that

the applicant was indeed served with a copy of the letter dated 16th September, 2010 from the respondent's counsel to the Deputy Registrar requesting for copies of the proceedings. The said letter was attached to the notice of appeal which the applicant has admitted it received on 16th July, 2010. We may add that **rule 81 (2)** as it existed at the time merely required that the copy be "sent" to the respondent. It was amended to "served" in the new rules which came into effect in December 2010.

Accordingly, we are of the view that there is no basis to the application dated 5th November, 2010 and the same is dismissed with costs to the respondent.

Dated and delivered at Eldoret this 25th day of March, 2011.

P. N. WAKI

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JUDGE OF APPEAL

J. W. ONYANGO OTIENO

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JUDGE OF APPEAL

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR