



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA

AT MOMBASA

Civil Appli 270 of 2007

TRANS-NATIONAL BANK LIMITEDAPPLICANT

AND

DANIEL MUNENE KABOGORESPONDENT

(Application to deem the notice of appeal filed on 18th November, 2002 in HCCC No. 428 of 1991 as withdrawn in an intended appeal from a ruling and order of the High Court of Kenya at Mombasa (Waki, J) dated 13th November, 2002

in

H.C.C. SUIT NO. 428 OF 1991)

RULING OF THE COURT

On 13th November, 2002, Waki, J as he then was, made some order against which **Daniel Munene Kabogo**, the respondent herein, wished to appeal and he duly filed a notice of appeal on 18th November, 2002. On 15th November, 2002 the respondent's then lawyer, Mr. Stephen Macharia Kimani wrote to the Deputy Registrar of the High Court asking for copies of the ruling and proceedings, amongst other things. That letter was copied to the advocates for the present applicant, Transnational Bank Ltd. That was obviously done so as to comply with *rule 81 (2)* of the Court's Rules, and as that was done, time would stop running until the Deputy Registrar of the superior court notifies the person seeking the proceedings that the same are available for collection. From the record before us, it appears that at some stage, the High Court record went missing and an application similar to- the present one or to strike out the notice of appeal was made. That application was rejected.

But upto now, no appeal has been lodged and Mr. Odongo for the respondent or intending appellant did not give us any indication as to when the appeal might be lodged. From 13th November, 2002 when the ruling was delivered to the present time is nearly seven years. The last letter which the respondent wrote to the Deputy Registrar enquiring about the proceedings was written on 26th February, 2003, some six years ago. There is no sworn explanation from either the respondent himself or his present advocate as to what efforts they have made to get the proceedings since their last letter some six years back. We think the respondent is not interested in appealing and we agree with Miss Mango for the applicant that the Court ought to, under *rule 82 (a)* of the Court's, deem the notice of appeal dated 15th November, 2002

and lodged in the Court on 18th November, 2002 to have been withdrawn. Seven years is a long enough period for any one to appeal and there can be no use in keeping the notice of appeal alive. We allow the notice of motion dated 17th September, 2007 and lodged in Court on 16th October, 2007 and grant the order prayed for in paragraph 1 (one) of that motion. We award the costs of the motion to the applicant.

Dated and delivered at Mombasa this 23rd day of January, 2009.

R. S. C. OMOLO

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JUDGE OF APPEAL

J. W. ONYANGO OTIENO

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JUDGE OF APPEAL

D. K. S. AGANYANYA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR