



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MOMBASA

Civil Application 92 of 2008

1. **MARIAMU ABUBAKAR IRERI**
2. **KAIMU ABUBAKAR KARWIRUAAPPLICANTS**

AND

NATIONAL CEREALS & PRODUCE BOARDRESPONDENT

(An application to strike out the notice of appeal from a judgment and decree of the

High court of Kenya at Mombasa (Maraga, J.) dated 29th July, 2005

in

H.C.C.C. NO. 152 OF 1997)

RULING OF THE COURT

This is an application expressed to be brought under **rules 80, 81 (1) and (2) and 82 (a)** of the Court of Appeal Rules. The applicants are the administrators of the estate of **Zablon Mwaluma Kadori** (deceased), who was the plaintiff in **Mombasa High Court Civil Case No. 152 of 1997** with National Cereals & Produce Board, as the defendant.

On 29th July, 2005 judgment was entered against the respondent for a liquidated sum of Kshs.511,080/= and other dues with costs and interest. The respondent was dissatisfied with the decision, and on 2nd August, 2005 it filed a notice of appeal intimating its intention of challenging the judgment on appeal. **Patrick Mbuthia Karanja**, the Legal Officer of the respondent has deponed in an affidavit filed herein on 20th June, 2008, that the respondent applied for copies of proceedings by its letter dated 1st August, 2005, which letter was copied to Messrs Mohamed & Lethome, Advocates, P.O. Box 40572 Nairobi. The firm of advocates was and is the one on record for the applicants. By **dint** of the proviso to **rule 81** of the Court of Appeal Rules, and in view of the fact that the letter was filed in court and copied to the applicants’ advocates’ within 30 days of the decision against which an appeal is intended, time stopped running. Copies of proceedings were supplied to the respondent by the superior court on 3rd September, 2008, and a certificate of delay was duly issued. The said certificate, which bears the date 19th September, 2008, certifies as follows: -

“This is to certify that Messrs Omondi Waweru & company Advocates, vide their letter dated 1st day of

August, 2005 and filed in court on 2nd day of August, 2005 and copied to M/S. Mohamed and Lethome Advocates applied for certified copies of proceedings and judgment made by the court on 20th day of July, 2005.

The same were supplied to them on 3rd day of September, 2008.

The period between the 2nd day of August, 2005 to the 3rd day of September, 2008 was required to prepare and deliver the said proceedings and judgment to the said advocates.”

In the application before us the applicants contend that there has been unreasonable delay in taking the essential step of filing an appeal. Consequently, they pray that the notice of appeal dated 2nd August, 2005, be struck out.

The respondent has now filed its record of appeal. It was filed on 29th October, 2008, and it cannot be said that the same was filed out of time in view of what we stated earlier, that upon requesting for copies of proceedings from the court and because the letter bespeaking those proceedings was copied to the applicants’ counsel time prescribed for filing an appeal stopped running. The running of the time resumed on or about 3rd September when copies of proceedings were delivered to the respondent. The period between 3rd September, 2008 and 29th October, 2008 when the record of appeal was filed is less than 60 days stipulated for filing the record. It has not been alleged that proceedings were ready for collection earlier than 3rd September, 2005. In those circumstances, account being taken of the proviso to rule 81, aforesaid, it cannot be said that there was delay in taking the essential step on record.

In the result we find no merit in the application before us. It is ordered dismissed with costs.

Dated and delivered at Mombasa this 16th day of October, 2009.

S.E.O. BOSIRE

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JUDGE OF APPEAL

J.W. ONYANGO OTIENO

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JUDGE OF APPEAL

J.G. NYAMU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR