



IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLI NO. 313 OF 2002

SOLOMON ANUSU MAKAYAAPPLICANT

AND

NAIROBI CITY COUNCILRESPONDENT

(An application to strike out a Notice of Appeal from the

High Court of Kenya at Nairobi (Rawal, J) dated 6th March 2002

in

H.C.C.C. No. 2866 of 1995)

RULING OF THE COURT

The applicant, through his counsel T. T. Aswani, Advocate, filed in this Court an application by way of Notice of Motion on 12th November 2002 under **rule 80** of the Court of Appeal Rules for striking out of the Notice of Appeal filed herein by the respondent on 12th March 2002.

The grounds on the face thereof and the averments in the affidavit in support were that though judgment in **High Court Civil Case No. 2866 of 1995** was delivered on 6th March 2002 and the Notice of Appeal filed on 12th March 2002 aforesaid and that the same respondent applied for copies of proceedings of that case on 11th March 2002, no other step had been taken to prosecute the intended appeal.

It stated further that in fact on 22nd August 2002 the applicant’s counsel gave notice of seven (7) days to the respondent of his intention to come to this Court with this application if the respondent took no steps to lodge the intended appeal but that no such step had been taken.

In this Court yesterday counsel addressed us and repeated what was contained in the grounds on the body of the application and the averments in the supporting affidavit. Though counsel for the respondent was served with the application and its legal officer swore a replying affidavit which was filed in Court on 10th April 2003, there was no representation for the said respondent on the date of hearing hereof though served with the hearing notice on 13th February, 2008.

In our view this is an application which, if the respondent was serious about the intended appeal, its counsel would have appeared to enlighten the Court on the contents of the replying affidavit. Failure to

do so shows lack of seriousness in proceeding with the intended appeal.

Though we feel the applicant ought to have annexed copy of the judgment of the aforementioned superior court case to this application to show what the contents therein were, we are nevertheless satisfied that the respondent failed to lodge the appeal within the 60 days stipulated by **rule 81(1)** or to show that the 60 days has been extended by virtue of the proviso to **rule 81(1)** and that that extended time has not expired..

In the result we allow the application dated 24th October 2002 and lodged in this Court on 12th November 2002 and strike out the Notice of Appeal dated and lodged in Court on 12th March 2002 with costs to the applicant.

Dated and delivered at Nairobi this 27th day of June, 2008

E. M. GITHINJI

.....

JUDGE OF APPEAL

J. W. ONYANGO OTIENO

.....

JUDGE OF APPEAL

D. K. S. AGANYANYA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR