



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

Civil Appli 148 of 2006

KHAN MOHAMMED SALIM

T/A KHAN & ASSOCIATES
ADVOCATES.....APPLICANT

AND

NATIONAL INDUSTRIAL CREDIT BANK & 3
OTHERSRESPONDENTS

(An application to strike out Civil Appeal No. 17 of 2006

from a ruling and order of the
High Court of Kenya
at Kisumu (Mr. Justice B. Tanui) dated 14th October, 2002

in

H.C.C.C. NO. 89 OF 2000)

RULING OF THE COURT:

Mr. Kiboi, learned counsel for the respondent herein concedes that the record of appeal which they lodged on 27th April, 2006 was served out of time on 5th May, 2006. He asks us to allow him to make an application for extension of time but he agrees that the present motion was served on him nearly one year ago. There can be no basis for our acceding to that request and as the record of appeal was in fact served out of time without the leave of the Court, there cannot be any valid answer to the prayer in paragraph (c) of the motion dated 12th May, 2006 and lodged in the Court on 17th May, 2006. We think we ought not to deal with the issue of the validity of the order which is raised in paragraph (a) of the motion.

In view of the stand we have taken on prayer (c) we think it is unnecessary to deal with prayer (a) and that being so, we allow the motion with the result that Civil Appeal No. 96 of 2006 be and is hereby struck out with the costs thereof to the applicant. We also award to the applicant the costs of the motion.

Dated and delivered at Kisumu this 21st day of March, 2007.

R.S.C. OMOLO

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JUDGE OF APPEAL

S.E.O. BOSIRE

.....

JUDGE OF APPEAL

W. S. DEVERELL

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR