



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL OF KENYA  
AT NAKURU**

**Civil Appli 143 of 2006**

**DANIEL CHEBUTUK ROTICH ..... 1<sup>ST</sup> APPLICANT**

**M K C (minor suing through His father and next friend D C  
R .....2<sup>ND</sup> APPLICANT**

**AND**

**EMIRATES AIRLINES ..... RESPONDENT**

***( An application to strike out the Record of Appeal from the judgment of the High Court of Kenya at Nakuru ( Musinga, J.) dated 7<sup>th</sup> April, 2006***

**in**

**H.C.C.C NO.368 OF 2001)**

\*\*\*\*\*

**RULING OF THE COURT**

This is a motion by D C R suing on behalf of a minor Master M K C, and on behalf of himself, seeking orders that a record of appeal which was filed on 7<sup>th</sup> April 2006, by the respondent Emirates Airlines be struck out. The reason advanced in support of the application is that the record of appeal was lodged in court out of time.

The applicants successfully sued the respondent in the superior court for damages, special and general under Nakuru High Court Civil Case No. 368 of 2001. Judgment was pronounced on 27<sup>th</sup> April 2005. The respondent having been dissatisfied with the decision timeously filed a notice of appeal on 5<sup>th</sup> May 2005. It was, under our rules, supposed to lodge a record of appeal within 60 days, but it did not do so. It lodged the record of appeal on 7<sup>th</sup> April 2006, long after the period stipulated and seeks to rely on the proviso to **rule 81** of the Rules of this Court.

The proviso to rule 81 aforesaid will not avail a party unless that party requests for copies of proceedings in writing within 30 days of the date of the decision against which an appeal is intended.

On the material before us it is clear that the respondent did not request for copies of proceedings until 29<sup>th</sup> August 2005, long after the 30 days stipulated under **rule 81**, above. Although a copy of the Certificate of Delay on record states that the letter bespeaking copies of proceedings was filed within 30 days, that cannot possibly be true since as we stated earlier the judgment against which an appeal is intended was delivered on 27<sup>th</sup> April, 2005. In the circumstances, that certificate is false and cannot be relied upon. It then follows that the record of appeal was filed out of time and that renders Civil Appeal No.76 incompetent. The appeal is therefore ordered struck out with costs. We also award the costs of this application to the applicants.

**Dated and delivered this 29<sup>th</sup> day of September, 2006.**

**P.K. TUNOI**

.....

**JUDGE OF APPEAL**

**S.E.O. BOSIRE**

.....

**JUDGE OF APPEAL**

**E.M. GITHINJI**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**