



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
CORAM: TUNOI, GITHINJI & DEVERELL, J.J.A.
Civil Appli NAI 103 of 2005

BETWEEN

ZACHARIAH MUHIA NG'ANG'A APPLICANT
VS

1. ABDUL HUSSEIN OMAR)

2. STEPHEN MBUTHIA)

3. POLLMANS TOURS & SAFARIS)
RESPONDENTS

4. HUSSEIN ABDALLA AHMED)

(An application to strike out and dismiss a notice of appeal from the judgment and order of the High Court of Kenya at Mombasa (Hon. G.A. Omwita & J. K. Serгон, J) dated 19th March, 2003

in

H.C.C.C. NO. 591 OF 1995)

RULING OF THE COURT

By this application expressed to be brought under rules 80 and 82 of the Rules of the Court the applicant seeks to have an order to strike out the Notice of Appeal dated 24th March, 2003 and lodged in Court on the following day, 25th March, 2003.

It is manifestly clear and indeed not disputed by the respondents that no appeal has so far been instituted against the judgment complained of which was delivered by the superior court on the 19th March, 2003.

The only contention by the respondents as to why no appeal has been lodged within the prescribed time is that copies of proceedings and judgment have not been received. A letter bespeaking of the said copies dated 24th March, 2003 has been exhibited. As to what the respondents did thereafter is not clear.

No extension of time to lodge an intended appeal has been sought nor have the respondents obtained a Certificate of Delay from the Registrar. In the circumstances, the respondents cannot resist this application.

Moreover, under **rule 82** the Notice of Appeal aforesaid is deemed to have been withdrawn the

respondents having failed to institute an appeal within the appointed time.

This application succeeds and is accordingly allowed. The Notice of Appeal dated 24th March, 2003 and lodged in Court on 25th March, 2003 is hereby ordered struck out. The applicant shall have the costs of the application.

Dated and delivered at Mombasa this 29th day of July, 2005.

P. K. TUNOI

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JUDGE OF APPEAL

E. M. GITHINJI

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JUDGE OF APPEAL

W. S. DEVERELL

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JUDGE OF APPEAL

I certify that this a true
copy of the original.

DEPUTY REGISTRAR