

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
CORAM: OMOLO, TUNOI & GITHINJI, JJ.A.
Civil Appli NAI 39 of 2005

BETWEEN
PETER KINYUA MUCHENDU APPELLANT
AND
GETRUDE CHAO WAITARESPONDENT

(An application to strike out notice of appeal from a ruling
and order of the High Court of Kenya at Mombasa (Mr. Justice Serгон) dated
27th June, 2003
in
H.C.C.C. NO. 72 OF 2003)

RULING OF THE COURT

Under the proviso to **rule 81 (1)** of the Court of Appeal Rules, any period which is certified by the registrar of the superior court as being necessary or required for the preparation and delivery of proceedings to the applicant shall be excluded in computing the time within which to file the record of appeal. In the present motion, there is a certificate by the Deputy Registrar of the superior court that he required the period from 1st July, 2003 to 8th July, 2005 to prepare and deliver to the respondent the proceedings in the case. The Deputy Registrar further certified that the respondent collected the proceedings on 8th July, 2005. There is no acceptable evidence before us to convince us that the certificate of the Deputy Registrar is false. Mr. Munyao for the applicant tells us that the certificate was issued in order to defeat their present motion. There is no acceptable evidence before us which would justify such a serious conclusion.

The notice of motion before us has no merit in view of the Deputy Registrar's certificate and we order that it be, and is hereby dismissed with costs to the respondent.

Dated and delivered at Mombasa this 27th day of July, 2005.

R. S. C. OMOLO
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JUDGE OF APPEAL
P. K. TUNOI
.....
JUDGE OF APPEAL
E. M. GITHINJI
.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR