



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL AT NAKURU**  
**CIVIL APPEAL ( APPLICATION) 315 OF 2001**

**BETWEEN**

**DANIEL NGANGA KANYI ..... APPLICANT/RESPONDENT**

**AND**

**SOSPHINAF COMPANY LIMITED )**

**JAMES GATIKU NDOLO ) ..... RESPONDENTS/APPELLANTS**

**RULING OF THE COURT**

The application before us seeks an order striking out the main appeal for the reason that it was filed out of time. The appeal is against the judgment/decree of the Superior Court given on the 23rd March, 2001. A notice of appeal was timeously filed and served, and a letter bespeaking copies of the proceedings was written to the Deputy Registrar on 27th March, 2001. As the letter complied with the provisions of rule 80 of the Rules of this Court, the time limited by rule 81 for filing the appeal would not begin to run until the registrar had issued his certificate for the period required for preparation and delivery of such copies to the appellants. Put another way, that period is excluded from computation of time by issuance of a certificate of delay by the registrar. In this matter, a certificate of delay was issued by the deputy registrar on the 2nd October, 2001. As it forms the gravamen of the applicant's contentions, we set it out fully:-

**“CERTIFICATE OF DELAY**

I, P.K. SULTANI (MISS) Deputy Registrar High Court of Kenya at Nakuru hereby certify that M/s Maraga and Company Advocates applied for a copy of the proceedings and a copy of the judgment on the 27th day of March, 2001 and the same were supplied by the Court on the 2nd day of October, 2001.

DATED at Nakuru this 3rd day of October, 2001. DEPUTY REGISTRAR HIGH COURT OF KENYA – NAKURU” We will return to the Certificate of Delay shortly. But in reliance of it, the appellants compiled the record of appeal and filed it on 30th November, 2001 which, on the face of it, was in compliance with the rules. The respondent however says the certificate of delay tells a lie about itself and it ought not to be relied upon to validate the appeal. Learned Counsel, Mr. Mbigi, for the applicant, gave the reasons for such contention as follows:-

On the 21st June, 2001 a letter issued forth from the Deputy Registrar addressed to the appellants' advocates' firm and copied to the respondents' advocates firm. It confirmed that the proceedings were typed and ready for collection. The respondents' firm received their copy of the letter on 21st July, 2001. If the appellants took their sweet time to collect the copies in October, says Mr. Mbigi, that would be of no consequence. Time began to run when the Registrar wrote the letter. In his view, the strict reading of the proviso to rule 80 is that only the time taken for “preparation of the proceedings” can be excluded in

computation of time. He cited several rulings of this Court where, for example, the period taken in obtaining the Certificate of Delay was not excluded; the period taken to await certification of the proceedings was not excluded, or the period taken in drafting the order appealed against was not excluded. Those decisions are correct, but, with respect, none of them deals with the peculiar facts of the matter before us.

The appellants swear that they never received the letter from the registrar dated 21st June, 2001 and that is why they sent a reminder for the copies in September 2001, copying that letter to the respondent's advocates. They swear they were in the Court registry several times subsequent thereto pursuing the copies but were informed that the Court file was missing. It was not until October, 2001 that the registrar retrieved the Court file only to find that the original of the letter dated 21st June, 2001 was still in the file and had not been delivered to the appellants' Advocates. That is when the registrar supplied the copies and issued the Certificate of Delay reproduced above. It is under those circumstances that learned Counsel for the appellants, Mr. Wamaasa, submitted that there should be no blame placed on the appellant.

We have considered the application and the rival contentions of counsel. It is evident that the Certificate of Delay issued by the Deputy Registrar is not informative about the time taken to prepare copies of the proceedings. It would be desirable that such certificates comply fully or substantially with the wording of the rule and we would urge deputy registrars to heed that advice in future. We appreciate, however, that there is no prescribed form for Certificates of Delay. The proviso to rule 80 provides for not only "preparation" but also "delivery" of the copies to the appellant. It states in relevant part:-

"..... there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy." – emphasis supplied.

The Certificate of Delay confirms when delivery of the copies was made to the appellants. That is all that the rule requires of the Court to consider. We are satisfied, as no evidence has been placed before us to confirm otherwise, that, any errors of omission or commission in this matter were made by the Court. We see no reason to strike out the appeal and we dismiss the application with costs.

**DATED and DELIVERED at NAKURU this 30th day of September, 2005.**

**P.K. TUNOI .....**

**JUDGE OF APPEAL**

**E.O. O'KUBASU .....**

**JUDGE OF APPEAL**

**P.N. WAKI .....**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**