

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, O’KUBASU & DEVERELL, JJA.)

CIVIL APPEAL 273 OF 2001

BETWEEN

STEPHEN KINORO KAMAU APPELLANT

AND

1. WANJIKU KINUTHIA

2. NYAKIEGA KINUTHIA (As Administrators of

the estate of KINUTHIA KARIUKI (DECEASED)..... RESPONDENTS

(Appeal from the judgment of the High Court of Kenya at
Nairobi (Angawa, J.) dated 19th
October, 2000
in

H.C.C. MISCELLANEOUS APPLICATION NO. 2360 OF 1995 (O.S.)

RULING OF THE COURT

Before us is an application by way of notice of motion brought under **rules 42** and **80** of the Court of Appeal Rules (the Rules) in which the applicants are seeking an order that the appeal herein be struck out on the ground that the notice of appeal was served out of time contrary to **rule 76(1)** of the Rules.

Mr. Kinuthia, for the applicants, submitted that the notice of appeal was served on his clients three days out of time. In opposing the application, Mr. Wahome, for the respondents, sought to rely on **rule 3(a)** of the Rules and it was his contention that in computing time the day the act was to be done must be excluded. But that argument by Mr. Wahome was countered by Mr. Kinuthia’s reliance on **rule 3(d)** of the Rules.

This is a matter that the advocates could have dealt with on their own without involving the Court on the issue of computation of time. Rule 76(1) of the Rules provides:-

“An intended appellant shall, before or within seven days after lodging notice of appeal serve copies thereof on all persons directly affected by the appeal.”

The undisputed facts before us clearly show that the appellants were served three days out of time. In a bid to show that this application ought to be dismissed, Mr. Wahome reminded us that *28th October, 2000* was a Saturday and in his view, time could only start to run as from *Monday the 30th October, 2000*. But that cannot be so in view of **rule 3(d)** of the Rules which provides:

“Where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time.”

This applies where a short **period** of **not more than 6 days** has been fixed within which an act is to be done. In this situation then any Sunday or Public Holiday that falls within the short period shall not be reckoned in the computation of the short period.

For example, if the Court or the Rules require that a document be served within only **5 days** of the delivery of a court order and **any** of those 5 days is a Sunday and/or Public Holiday that day (or those days) shall not be counted in arriving at the fifth day from the delivery of the court order.

In this appeal Notice of Appeal was lodged on 27th October 2000. The Rules require service within 7 days. The first of the 7 was Saturday 28th October.

The second of the 7 was *Sunday 29th October*. The 7th day was Friday 3rd November. Neither the Saturday nor the Sunday were to be excluded **because** there is no mention in the Rule of Saturdays being specially treated **and** the Sunday was not the last day of the period and the period was longer than 6 days.

The Notice was served on Monday 6th November, which was three days late. In view of the foregoing, it is clear that this application to strike out the appeal cannot be resisted. No wonder, Mr. Wahome in a desperate bid to save the situation attempted to introduce the idea of extension of time under **rule 4** of the Rules but we quickly reminded him that he was in the wrong forum as regards extension of time under **rule 4**.

For the foregoing reasons, we have no alternative but to allow the application. Accordingly, the appeal filed herein is struck out. The applicants will have the costs of the application and the costs of the appeal.

Dated and delivered at Nairobi this 14th day of October, 2005.

R.S.C. OMOLO

.....
JUDGE OF APPEAL

E.O. O'KUBASU

.....
JUDGE OF APPEAL

W.S. DEVERELL

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR