



IN THE COURT OF APPEAL
AT NAIROBI

CORAM: TUNOI, O'KUBASU & DEVERELL, J.J.A

CIVIL APPLICATION NAI 10 OF 2003

BETWEEN

SAMEER JETHWA APPLICANT

AND

1. FRANCESCO DI NELLO)

2. SACHA FRANCESCA).....RESPONDENTS

RULING OF THE COURT

This is an application by way of reference from the decision of a single judge of this Court under rule 4 of the Court of Appeal Rules (the Rules) seeking extension of time to file and serve documents following the judgment of Angawa J. delivered in HCCC No.681 of 1997 on 28 November 2002 against which the applicant intends to appeal.

The extensions sought are in respect of the notice of appeal, the letter to the Deputy Registrar bespeaking a typed copy of the proceedings and a certified copy of the judgment.

The application also sought an order that the notice of appeal dated 4th December 2002 and the letter addressed to the Deputy Registrar of the High Court dated 2nd December 2002 filed on 9th December 2002 and served on the respondents advocates on 11th December, 2002 be expunged from the record.

The reason for seeking these orders was the discovery that, by mistake of the applicant's advocates, the Notice of Appeal and the letter to the Deputy Registrar of the High Court were given the wrong case number. Instead of the correct number HCCC No 681 of 1997 both the documents were headed with the wrong number HCCC No 6187 of 1997. The mistake was that of Henry Kuria Karanja who was at the time a pupil in the offices of the applicant's advocates Njoroge Regeru & Company.

This mistake came to the applicant's attention after the pupil noticed his mistake when preparing the affidavit of service of the documents on the 17th January, 2003. The current application was filed six days later on 23rd January 2003.

In a ruling delivered on 31st January 2003, Owour JA (as she then was) sitting as a single judge granted both the orders for extension of time and the orders for expungement sought.

Mr. Gitonga, learned counsel for the respondents to the application for extension, on his reference to the full bench, pointed out that the respondents to the application had not appeared before Owour JA so the

point he was about to raise had not been taken before her.

This point was that in effect the application was an application to strike out the original wrongly numbered notice of appeal and letter to the Registrar. This he submitted, could not be done by a single judge of appeal and he argued that until the documents had been struck out they still existed so that no fresh notice of appeal could be filed.

We consider that the wrongly numbered notice of appeal was never properly on record in HCCC No. 681 of 1997 and therefore did not need to be expunged before the filing of a fresh correctly numbered notice of appeal out of time if an extension is granted.

For these reasons we consider that the single judge came to the right conclusion in extending time for the filing of the notice of appeal and for sending the letter requesting the typed copy of the record and certified copy of the judgment and we have no reason to disturb the ruling of the single judge to this effect.

Dated and delivered at Nairobi this 7th day of October, 2005.

P. K. TUNOI

.....

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