



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, TUNOI & O’KUBASU, J.J.A)

CIVIL APPLICATION NO. NAI. 373 OF 2002

BETWEEN

1. HUMPHREY KARIUKI

2. CRUCIAL PROPERTIES LIMITEDAPPLICANTS

AND

ATTORNEY GENERALRESPONDENT/INTENDED APPELLANT

(Application to strike out Notice of Appeal filed on 10th May, 2001 in an intended appeal from the decision and order of the High

Court of Kenya at Nairobi (Oguk, J.) dated 10.5.2001

in

H.C.MISC. APPL. NO. 174 OF 2001)

RULING OF THE COURT

This is an application under rules **42, 43(1), 80, 81(1)** and **82(a)** of the Court of Appeal rules, the Rules, to strike out the notice of appeal lodged in Court on 10th May, 2001, by the Attorney General on the ground that an essential step in the proceedings has not been taken.

The application alleges that the respondent has not filed his appeal within the time prescribed by the Rules and therefore the notice of appeal is now spent and of no consequence and the same ought to be struck out.

Before Miss Mugo for the applicants urged her application we pointed out to her that it was not clear from the record before us whether the proceedings in the superior court were criminal or civil in nature. We did this because the proceedings in that court were held in its **Criminal Division** and the number assigned to the application before it is **Criminal Application No. 174 of 2001**. The matter complained of was grounded on some sections of the *Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994* as read with Legal Notice No. 40 of 2001.

Further, in his ruling dated 3rd April, 2001, Oguk J. held: -

“The conclusion to which I have reached is that this matter is properly before this Court and that a Criminal Division of this Court is properly seized of the matter.”

Why we sought clarification whether the matter in essence is criminal or civil should be obvious. If it is civil then the application is properly before us and we can entertain it. If the matter in issue is criminal then it is misconceived since the preparation, in the main, of criminal appeal lies squarely on the shoulders of the Registrar of the superior court. **Rule 61 (1)** of the Rules states as follows: -

“As soon as practicable after a notice of appeal has been lodged, the registrar of the superior court shall prepare the record of appeal.”

It is apparent therefore that in a criminal matter on appeal a party plays a minimal role in the preparation of his appeal after he has lodged a notice of appeal.

As the applicants have failed to satisfy us that the proceedings in the superior court were of a civil nature, we have no hesitation in holding that this application is misconceived and we order that it be dismissed with costs.

Dated and delivered at Nairobi this 20th day of February, 2004.

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

E.O. O’KUBASU

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR