



IN THE COURT OF APPEAL

AT NYERI

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

CIVIL APPEAL (APPLICATION) NO. 223 OF 2001

BETWEEN

KENYA BUS SERVICES LTD. (STAGECOACH BUS SERVICE) APPELLANT

AND

MUNA ISAACK RESPONDENT

(Application to strike out Notice and record of appeal in an appeal from the judgment and decree of the High Court of Kenya at Meru (Tuiyot, J) dated 20th June, 2001

in

H.C.C.C No. 117 of 1998)

RULING OF THE COURT

By this application expressed to be brought under rule 80 of the Court of Appeal Rules (the Rules) the respondent, the successful party in the suit before the superior court, prays that the Notice of Appeal filed in this Court by the appellant on 22nd June, 2001, and served on the respondent on 3rd July, 2001, be struck out as it was not served on the respondent within 7 days after lodging it as required by rule 76(1) of the Rules.

The default is readily admitted by Mr. Kinyanjui, counsel for the appellant, but he has in response raised a very interesting point. He has contended that as far as he is concerned, the operative date on the Notice of Appeal is the date upon which the Notice of Appeal is lodged, signed by the Deputy Registrar and the Seal of the Court affixed and appended on it. Thus, Mr. Kinyanjui submits that as the Notice of Appeal was signed and sealed by the Deputy Registrar on 3rd July, 2001, the operative and material date is 3rd July, 2001. He averred that as he served the Notice of Appeal on the same day, that is on 3rd July, 2001, he did not offend rule 76(1) of the Rules as he served it within the prescribed time.

The Notice of Appeal herein was filed on 22nd June, 2001 and fees, as the Official Receipt No. 473436 indicates, paid for it on the same day. The rubber stamp signifying its filing and receipt by the Court is affixed at the top of the Notice of Appeal. It is also dated and signed by the advocate for the appellant. However, the Notice of Appeal shows that it was lodged in the same court on 3rd July, 2001 and the Deputy Registrar has also signed it.

Under rule 74 of the Rules, any person who desires to appeal to this Court shall give notice in writing which shall be lodged in duplicate with the registrar of the superior court. The date envisaged by

the rule is the date upon which the Notice of Appeal is filed and the requisite fees paid for it. The date upon which the registrar endorses his signature and affixes the Seal of the Court is not material for the service of the Notice of Appeal.

The appellant had no reason whatsoever to file the Notice of Appeal on 22nd June, 2001, and wait for about 12 days before serving it upon the respondent. There is no requirement under the Rules that the Notice of Appeal should not be served upon persons affected by the appeal until the registrar appends his signature and the Seal on it. Further, no explanation has been forthcoming as to why the registrar took 12 days to formally acknowledge the Notice of Appeal which had been properly and validly lodged in Court. As the Notice of Appeal in this instance was not served upon the respondent within the time prescribed by the Rules and as the appellant has not sought extension of time to serve it, it must follow that the Notice of Appeal is not valid and is ordered struck out.

Consequently, Civil Appeal No. 223 of 2001 is incurably defective and is also ordered struck out with costs.

The respondent will also have the costs of the application.

Dated and delivered at Nyeri this 14th day of May, 2004.

P. K. TUNOI

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JUDGE OF APPEAL

E. O. O'KUBASU

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JUDGE OF APPEAL

A.G. RINGERA

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AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR