



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, OWUOR & O'KUBASU, JJ.A.)

CIVIL APPLICATION NO. NAI. 297 OF 2000

BETWEEN

TRUST BANK LIMITED APPLICANT

AND

KICOMI (1993) LIMITED RESPONDENT

(Application to strike out the notice of appeal lodged by the respondent on 15th
May, 2000 in an intended appeal from the judgment of the High Court of
Kenya at Nairobi (Mbaluto, J.) dated 7th March, 2000

in

H.C.C.C. NO. 966 OF 1999)

RULING OF THE COURT:

While we sympathise with and appreciate the predicament in which Mrs. Arwa finds herself, we do not think that it is right that this application be kept pending endlessly. Even if Mr. K'Owade himself had been here, we do not see what he could have said against the matters on which Mr. Kiragu has submitted. There is no denying the fact that the respondent applied for proceedings well outside thirty days from the date on which the decision sought to be challenged on appeal was made. That alone would deprive the respondent of any possibility of relying on the proviso to **rule 87 (1)** of the Court's rules and if the respondent cannot obtain a certificate of delay it will be well night impossible to explain the delay from the date of the decision to the present time.

It is noteworthy that though the motion before us was lodged on 25th October, 2000, the respondent has not been able to do anything about its intended appeal. We allow this motion and order that the notice of appeal lodged in this Court on 15th May, 2000 be and is hereby struck out with costs to the applicant.

Dated at Nairobi this 31st day of January, 2002.

R. S. C. OMOLO

.....

JUDGE OF APPEAL

E. OWUOR

.....

JUDGE OF APPEAL

E. O. O'KUBASU

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR