

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

CORAM: OMOLO, SHAH & KEIWUA, JJA

CIVIL APPEAL NO. 198 OF 2000

BETWEEN

KENYA COMMERCIAL BANKAPPELLANT

AND

CHARLES OTISO OTUNDORESPONDENT

**(Appeal from the decree of the High Court of Kenya at
Kisii (Mbaluto, J) dated 2nd April, 1998
in
H.C.C.C. NO. 331 OF 1996)

RULING OF THE COURT

Mr. Mboya who is appearing for the respondent to the appeal, namely, Charles Otiso Otundo, has lodged an application to have the appeal itself, Civil Appeal No. 1998 of 2000, struck out on the grounds that:

- (1)The appeal was filed out of time without leave;**
- (ii)Essential step has not been taken in the proceedings;**
- (iii)the certificate of delay is defective;**
- (iv)The letter bespeaking copies of proceedings and ruling apepaled against is not in the record of appeal.**

It is quite clear that the appellant's advocates received the requisite copies of proceedings and ruling on 12th April,

2000. Mr. Mboya's argument to the effect that the proceedings are deemed to be received when the letter informing of availability of proceedings is received is fallacious. The appeal having been lodged on 8th June, 2000 is filed in time. There is no requirement for the inclusion of a copy of the letter bespeaking copies of proceedings and ruling in the record of appeal. The certificate of delay sets out that fact.

We find nothing wrong with the certificate of delay. It sets out the dates of letters in question and the date of receipt by the appellant's advocates, of the proceedings and ruling.

This application is misconceived and is dismissed with costs.

Dated and delivered at Kisumu this 20th day of June, 2002.

R.
.....

S.

C.

OMOLO

JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

M.

Ole

KEIWUA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.