



**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**CORAM: TUNOI, SHAH & OWUOR, J.J.A**  
**CIVIL APPLICATION NO. NAI. 84 OF 2001**  
**BETWEEN**

**DUNCAN OSANO (Suing through his father & next friend)**  
**JAMES OSANO .....APPLICANT**  
**AND**  
**JANE NYAMBURA MWANGI .....1ST RESPONDENT**  
**KIBUGI GIKURO .....2ND RESPONDENT**

**(An application to strike out the Notice of Appeal lodged  
by the Respondent on the 15th March, 2000 against  
the Judgment of the High Court of Kenya at Nairobi  
(Ole Keiwua, JA) dated 2nd March, 2000**

**in  
H.C.C.C. NO. 2890 OF 1997)**

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**RULING OF THE COURT**

The applicant has moved this Court under rules 80, 81 and 82 of the Rules of this Court. He seeks an order to strike out the notice of appeal lodged by the respondents on 15th March, 2000. For the applicant, it is urged that the respondents have taken no serious steps to lodge the record and memorandum of appeal. It is also urged that the letter written by the respondents' advocates to the Registrar of the superior court requesting copies of proceedings and judgment was not received by the applicants' advocates. The reference is obviously to the letter dated 14th March, 2001 addressed by M/S Okwach & Company Advocates to the Registrar of the superior court and copied to M/S Njage Nyaboke & Company, Advocates. On the face of the letter is copied to the said advocates. Whether it was received by the said advocate cannot be in issue before us as there is nothing tangible before us to show that the letter might not have been received.

In these circumstances the respondents do have the benefit of the proviso to rule 81(1) of the Rules of this Court. That is to say the time to lodge the record of appeal has not yet begun to run. That being the case we have no alternative but to dismiss this application. It is ordered dismissed. Costs of this application will be costs in the intended appeal.

**Dated and delivered at Nairobi this 8th day of October, 2001.**

**P.K. TUNOI**  
.....  
**JUDGE OF APPEAL**

**A.B. SHAH**  
.....  
**JUDGE OF APPEAL**

**E. OWUOR**

.....  
**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**