

**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: TUNOI, SHAH & KEIWUA, J.J.A.)
CIVIL APPEAL NO. 235 OF 2001**

BETWEEN

OMEGA ENTERPRISES (KENYA) LIMITED APPELLANT

AND

ELDORET SIRIKWA HOTEL LIMITED1ST RESPONDENT

ANDREW DOUGLAS GREGORY2ND RESPONDENT

KENYA NATIONAL CAPITAL CORPORATION LIMITED 3RD RESPONDENT

**(Appeal from the Judgment and decree of the High Court of
Kenya (Ringera, J.) dated 20th July, 2001**

in

H.C.C.C. NO. 50 OF 1999)

RULING OF THE COURT

When this appeal was called to hearing, Mr. Kipkorir counsel for the first respondent, informed us that though he had filed a Notice of Appeal within the prescribed time and consequently applied for the proceedings and judgment, the superior court informed him only on 13th November, 2001 that the same were ready for collection.

It is clear that this appeal was lodged on 5th September, 2001, and is based on the proceedings and judgment prepared by Mr. Esmail, counsel for the appellant. Mr. Kipkorir doubted their veracity and indicated that he would have liked to compare them with those supplied by the Court. Moreover, Mr. Kipkorir indicated that it was his intention to file an appeal based on the proceedings and judgment obtained from Court and was still within time. He asked for adjournment to enable him to lodge his appeal or cross-appeal if advised. He further wanted to cross check and examine wanted to cross check and examine the record of appeal and to see whether the proceedings and the judgment incorporated therein tally with those supplied by the superior court. While we commend Mr. Esmail for the expedition with which he lodged this appeal, we must also consider the interests of the first respondent and others. No doubt, the letter of 13th November, 2001 causes us some concern. Neither Mr. Kipkorir nor Mr. Le Pelley can be faulted. They were entitled to rely on it and by doing so the operative date for lodging of appeal is as shown thereon. They still had time and time for them had not run out to take any action they wished to.

For the above reasons this appeal is taken out of today's cause list and stood over generally to a new date to be fixed in the Registry. The costs occasioned by this adjournment shall be in the appeal in any event.

Dated and delivered at Nairobi this 5th day of December, 2001.

P. K. TUNOI
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