

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KWACH, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 136 OF 1999

BETWEEN

COASTAL KENYA ENTERPRISES LIMITEDAPPLICANT

AND

SICILIA KASITIRESPONDENT

**(An intended appeal from the Judgment and Decree of
the High Court of Kenya at Nairobi (Hon. Justice
Juma) dated 11th March, 1998**

in

H.C.C.C. NO.1300 OF 1988)

R U L I N G

This is an application under rule 4 of the Court of Appeal Rules for extension of time to file and serve a Notice of Appeal and a Record of Appeal . The decision against which Coastal Kenya Enterprises Limited (the applicant) wishes to appeal was given by Juma J on 11th March, 1998. The application is supported by three affidavits sworn by Caroline Kittony, Joe Okwach and Satwinder Singh Bhogal .

A Notice of Appeal was filed by C. J. Kittony Advocates on behalf of the applicant on 20th March, 1998. In that notice it was stated that the applicant intended to appeal to this Court because it was dissatisfied with the ruling of the Honourable Mr Justice Juma dated 11th March, 1998.

What the learned Judge delivered that day with which the applicant could have been dissatisfied was a judgment . There is a world of difference between a ruling and a judgment. As I have already said, the judgment was delivered on 11th March, 1998 but the present application was not filed until 10th June, 1999. I think that was quite an inordinate delay although Miss Mavisi , for the applicant, does not think so. One of the reasons given for bringing this application is that the Notice of Appeal was not served on the respondent's Advocates, but I think the true reason is to be found in paragraphs 16 and 17 of the affidavit of Caroline Kittony sworn on 8th June, 1999 where she deponed-

“(16) That I was at the time engaged in preparing and prosecuting the applicant’s application for stay of execution and by an oversight did not ensure the compliance with requirements of filing and serving a proper Notice of Appeal.

(17) That I also prepared the Notice of Appeal in a hurry and did not notice that I had inserted the word ruling instead of decision as regards the judgment of the Honourable Justice Juma ”. (underlining mine).

I deduce from her averments in these two paragraphs that Caroline Kittony believes that the Notice of Appeal which she filed, and is still on record, is defective and cannot form the basis of a competent appeal. That may well be true but as long as that Notice of Appeal is still in place, it would be a gross

abuse of my jurisdiction as a single Judge to grant leave to file another Notice of Appeal. Among the prayers sought on this Motion there is none seeking an order to withdraw the Notice of Appeal filed on 20th March, 1998. This is sufficient to dispose of this application.

Consequently, I decline to exercise my discretion in favour of the applicant and dismiss the application with costs to the respondent.

Dated and delivered at Nairobi this 15th day of February 2000.

R. O. KWACH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR