



IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, OMOLO & LAKHA, JJ.A.)
CIVIL APPLICATION NO. NAI. 174 OF 2000

BETWEEN

M.M.J. KISOSO APPLICANT
AND

EXPRESS KENYA LIMITED
ALI BAKARI ALIRESPONDENTS

**(Application for striking out a Notice of Appeal in an intended appeal from a Judgment
of the High Court of
Kenya at Nairobi (Justice Hayanga) dated 21st December, 1999**

in
H.C.C.C. NO. 2865 OF 1993

RULING OF THE COURT

This is an application by the successful plaintiff in the superior court which entered judgment against the defendant on 21 December 1999. The defendant gave a notice of appeal on 22 December, 1999 but no appeal has yet been filed. In these circumstances, an application has now been made on behalf of the plaintiff under **rule 80 of the Court of Appeal Rules** to strike out the notice of appeal since it has ceased to be in existence as no record of appeal was filed within the prescribed time. In the supporting affidavit, it is deponed that no application to extend time is pending or has been granted. Further, a copy of the judgment was certified on 16 February, 2000.

The application is opposed. In the replying affidavit, it is deponed that an application was made to the Deputy Registrar on 22 December, 1999 requesting for copies of the proceedings and the same was copied to the applicant pursuant to **rule 81 of the Rules**. Reliance is placed on the fact that subsequent to the judgment the applicant made an application for review which occasioned a delay in the file being not available from 26 January to 6 March, 2000. Thereafter, there was further delay because mistakenly the respondent applied for certified copies of the proceedings. This took a longer period than the ordinary copies. The respondent depones that the proceedings as corrected have not yet been made available to him.

We have carefully considered these rival submissions and are satisfied that the respondents are not solely to blame for the delay in the matter. We are not persuaded that the respondents have shown in the circumstances less diligence than is expected of them. It is salutary to have litigation concluded as soon as possible and we trust that all steps will be taken diligently by the parties to ensure that this happens.

We are, however, unable to accede to the application which must be dismissed. Costs of the application

shall abide the appeal.

Dated and delivered at Nairobi this 19th day of October, 2000.

J.E. GICHERU

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JUDGE OF APPEAL

R.S.C. OMOLO

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR