



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
(CORAM: GICHERU, OMOLO & AKIWUMI, JJ.A.)
CIVIL APPLICATION NO. NAI. 171 OF 2000 (KSM 32/00)

BETWEEN

SOUTH NYANZA SUGAR CO. LTD. APPLICANT

AND

HESBORN ONYURO RESPONDENT

**(An application for leave to strike out a defective
Notice of Appeal from the Ruling and Order of the
High Court of Kenya at Kisumu (Justice Wambilyangah)
dated 11th april, 2000**

**in
H.C.C.C. NO. 254 OF 1999)**

RULING OF THE COURT

This unusual application, has been brought by the Appellant in an intended appeal, under Rule 80 of our Rules, to strike out the Notice of Appeal which it had filed and which it claims to be defective because it omits the date on which the decision intended to be appealed against, was delivered.

Rule 80 allows a person affected by an appeal, to apply to strike out a notice of appeal on the following grounds:

"that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time."

None of those grounds have been urged in support of the application and neither can it be said that they apply. For this reason alone the application must be dismissed.

It was, however, argued on behalf of the Applicant that he is a "person affected by an appeal". But before we decide on this issue, it is necessary to consider Rule 76(1) of our Rules which lays the foundation to Rule 80 and which provides that an intended appellant shall within a given period, serve copies of his notice of appeal on "all persons directly affected by the appeal". We are of the view that the phrase "a person affected by an appeal" as appears in Rule 80, must be interpreted within the context of the similar phrase employed in Rule 76(1), that is to say, those who may be made or become parties to

an appeal, other than the appellant. To hold that this includes the appellant himself, would make nonsense of the two Rules.

There are avenues which the Applicant may properly exploit to achieve its intention of not going on with its present intended appeal. But the present application is not one of them.

In the result, the Applicant's application is dismissed with costs assessed at Kshs.3,000/- to be paid within 30 days from today otherwise, execution to issue.

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

J. E. GICHERU

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

A. M. AKIWUMI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.



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