**LZ Engineering Construction Ltd v Deposit Protection Fund Board**

[2000] 2 EA 438 (CAK)

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 22 December 2000

**Case Number:** 244/00

**Before:** Tunoi, Shah and Owuor JJA

**Sourced by:** LawAfrica

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**Summarised by:** W Amoko

*[1] Practice and procedure – Court of Appeal – Notice of appeal – Time of appeal –Suspension of time*

*by an application for copies of proceedings – Whether the letter requesting proceedings should be filed*

*and copied to all Respondents – Whether the notice of appeal Court of Appeal Rules – Proviso to Rule*

*85(1).*

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*[2] Practice and procedure – Court of appeal – Notice of appeal – Service of documents – How service*

*is to be effected – Rule 17(1) – Court of Appeal Rules.*

**Editor’s Summary**

The Deposit Protection Fund Board (“the Board”) lodged timeously, on 13 June 2000, a notice of appeal

against the decision of the High Court which notice stated the parties upon whom the Board intended the

notice to be served. The notice was not served upon at least one of them. The Board also applied to the

High Court for copies of the proceedings. It was alleged that the letter was not filed nor was it copied to

two of the firms of advocates named in the notice of appeal. LZ Engineering Construction Ltd applied to

have the notice of appeal struck out on two grounds but the argument pursued was that the appeal had not

been filed within 60 days of the date of the filing the notice of appeal.

**Held** – The application would be allowed because the Board could not take advantage of the proviso to

Rule 81(1) suspending the running of time as the letter requesting copies of the proceedings had not been

filed in the High Court and the time for filing the appeal lapsed and as no appeal had been filed by that

date, the notice of appeal was a dead letter and was deemed to be withdrawn.

Under Rule 17(1) of the Court of Appeal Rules, absent any special direction, service of a document

must be made personally on the person to be served or a person authorised to appear on his behalf. As the

letter was not copied to at least one of the advocates named in the notice, the proviso to Rule 81(1) could

not enure to the Board’s benefit.

Application allowed. Notice of appeal struck out.