

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT

NAIROBI MILIMANI COMMERCIAL COURTS

Civil Appeal 341 of 2007

PARVINDER SINGH SAUND.....APPELLANT

VERSUS

JOHNSTONE LASARO MWANZIA.....RESPONDENT

R U L I N G

Parvinder Singh Saund, has come to this court under Order XLIX Rule 5 of the Civil Procedure Rule, and Section 3A of the Civil Procedure Act, seeking to have time extended for it to file the record of appeal out of time. The applicant was granted leave to file the appeal out of time in H.C.Misc. App. No.400 of 2006. Apparently the applicant was also ordered to file the record of appeal within 7 days. The applicant's advocate explains that he did not hear or note down the part of the order relating to the filing of the record of appeal. Therefore, although the memorandum of appeal was filed within time, no record of appeal has been filed to date.

The respondent objects to this application. A replying affidavit has been sworn by the respondent's advocate who reiterates that the order granting leave had a condition that the record of appeal be filed within 7 days. The respondent maintains that it extracted a copy of the order and served the applicant's advocate. The respondent therefore maintains that the applicant has not exhibited any seriousness in pursuing the appeal and is simply wasting the court's time.

Having considered this application, I do find that the initial extract of the order made on 10th September, 2007 did not have the condition for the filing of the record of appeal within 7 days. I note that there was an amended order extracted and issued on the 28th of February, 2008 wherein the condition for filing the record of appeal was added. It is clear that there was some confusion regarding that condition and in the circumstances it is only fair that this court exercises its discretion in the applicant's favour. Accordingly, I do allow this application and extend time for filing the record of appeal. I order that the record of appeal be filed within 7 days from the date hereof.

Dated and delivered this 20th day of May, 2008

H. M. OKWENGU

JUDGE