

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Case 1719 of 2007

TOPLINK AUCTIONEERS.....PLAINTIFF

VERSUS

ASTRAL AVIATION LTD.....DEFENDANT

RULING

Application dated 17.06.2008 under Order XLIX Rule 5 and Section 799 Civil Procedure Act seeking order to extend time for filing the appeal against Auctioneers Bill of Costs taxed on 06.02.2008 on the grounds that the applicant had left the matter in the hands of her Advocates only to discover later he had not filed appeal. The certificate of Taxation was issued on 19.12.2008.

The right of Appeal is donated by Rule 55 of Auctioneers Rule 4 which states that an appeal from Magistrate or Registrar or the Board shall be to a Judge in Chambers by way of chamber Summons setting out the grounds of the appeal. The appeal shall be filed within 7 days of the decision of the Registrar or Magistrate.

In this case there is delay. The ruling given by the Deputy Registrar on 06.02.2008 gave right of appeal within 28 days. That would bring the date of appeal to 5th March 2008. The applicant did not file this application until 18.06.2008 a period of more than 3 months. Furthermore no sufficient explanation has been offered for the delay.

If it is true she left the matter in the hands of her Advocate, she should, at least have visited his offices to check on the matter and to give instructions, as it is, she just says "*applicant was under the impression that her Advocates had lodged an appeal.*" This is not satisfactory explanation. There is no evidence to support the statement.

On the other hand, I have perused the proposed memorandum of appeal. Note that the procedure is by chamber summons not remorandum. I have also perused the written ruling made by Deputy Registrar. There has been no demonstration by applicant that the proposed appeal has good chances of success.

I therefore see no merit in the application. The same is dismissed with costs to the Respondent.

It is so ordered.

DATED this 24th day of October 2008.

JOYCE N. KHAMINWA

JUDGE