

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO 39 OF 2005

DIESEL INJECT & ELECTRICAL SERVICES LTD APPLICANT

VERSUS

P. N. MASHRU LIMITED RESPONDENT

RULING

This is an application under Section 79 G of the Civil Procedure Act for leave to file appeal out of time. The Judgment was delivered on 12th October, 2004 in the lower court, and this application was filed on 13th January, 2005, exactly three months after delivery of Judgment.

The Applicant wants to file this appeal against part of the Judgment of the lower court, relating to costs which the lower court failed to award to the Applicant following his successful suit in that Court. His reason for delay in filing appeal is that the advocate who held his Counsel's brief when Judgment was delivered assumed that costs were awarded when Judgment was entered in favour of the Applicant. It wasn't until much later, when the Respondent refused to pay these costs that Counsel realized that the costs had indeed not been awarded. All this is recorded in the exchange of correspondence between the Counsels, annexed to the Applicant's affidavit. It appears like a genuine mistake, and in any event there is no Replying Affidavit to controvert any of these facts. The delay is not inordinate, and I believe this is a proper case to exercise my discretion to grant leave to file appeal out of time.

I, therefore, allow the application dated 12th January, 2005. Costs shall be in cause.

Dated and delivered at Nairobi this 27th day of April, 2005.

ALNASHIR VISRAM
JUDGE