

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 172 OF 2004

BANK OF INDIA LTD PLAINTIFF

VERSUS

FRANCIS WANZINA MUKITI DEFENDANT

RULING

This is an application for leave to file cross-appeal out of time. Judgment was delivered on 12th February, 2004 and the two reasons cited for not filing the Memorandum of Appeal in time is that the Applicant was awaiting delivery of the lower court's proceedings, and that the lower court file had gone missing.

Section 79G of the Civil Procedure Act Cap 21, states:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

The Applicant did not require copies of the proceedings to lodge his appeal. All he required was a certified copy of the decree or order sought to be appealed from. Even in that case, Order XLI Rule 1A of the Civil Procedure Rules provides that the certified copy of the decree or order appealed from may be filed subsequently after the filing of the Memorandum of Appeal. Even if one were to consider the fact that the file of the lower court went missing, the Applicant has not shown how that prevented him from filing the requisite Memorandum of Appeal in this court. I am not satisfied that the applicant is entitled to the discretion sought. He has not shown “good and sufficient cause for not filing the appeal in time.”

I, therefore, dismiss the application dated 30th June, 2004 with costs. Dated and delivered at Nairobi this 21st day of October, 2004.

ALNASHIR VISRAM

JUDGE