



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**BEIERSDORF EAST AFRICA LTD ..... APPLICANT**

**VERSUS**

**MONKS MEDICARE LTD ..... DEFENDANT**

**RULING**

This is an application for leave to file appeal out of time. Judgment was delivered on 18th of September, 2003 and this application for enlargement of time was made on 19th February, 2004 exactly five months after delivery of Judgment.

The reasons cited for this rather inordinate delay are that (i) Judgment was delivered on 18th September, 2003 in the absence of the Applicant's advocate; (ii) the Advocate having the conduct of the matter left the Applicant's firm; (iii) the Court file went missing; (iv) the Applicant's Counsel was awaiting delivery of the proceedings to prepare the Memorandum of Appeal; and (v) there is an arguable appeal. I have perused the material before this Court and find as follows:

1. By his own admission, the Applicant's Counsel knew that Judgment would be delivered on 18th September, 2003, and in fact sent his court clerk to find someone to hold his brief. It was not as if he found out about the Judgment much later.
2. The Advocate's departure from his firm does not, in my view, constitute a good and sufficient cause to file appeal out of time. It is common knowledge, especially with a huge increase in the number of advocates now practicing before these Courts, that their mobility and transfer has also increased. If this were allowed to be a good excuse for a law firm's tardiness, I would send a wrong signal to law firms, and perpetuate a never-ending mischief, that will give rise to more carelessness and tardiness in the profession.
3. There is absolutely no evidence of the Court file missing. On the contrary, when the Applicant's Counsel applied for proceedings on 4th November, 2003 he got a response on 22nd January, 2004 that the proceedings were ready for collection. I must say that even I am surprised with our Registry's efficiency in making proceedings available within 6 weeks. In any event, Counsel did not require the proceedings to prepare and file his Memorandum. All he needed was a decree or order appealed from, which also could have been filed later, if unavailable at the time of filing the Memorandum of Appeal. The Applicant has not exhibited a Certificate of delay from the registry to indicate that the decree or order appealed from had been delayed.

Accordingly, and for reasons outlined, I am not satisfied that the Applicant has made out a good and sufficient cause for not filing this appeal in time, and is, therefore, not entitled to the discretion sought in accordance with

Section 79 G of the Civil Procedure Act. This application is, therefore, dismissed with costs to the Respondent.

**Dated and delivered at Nairobi this 8th day of December, 2004.**

**ALNASHIR VISRAM**

**JUDGE**