

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CIVIL APP. NO. 102 OF 1999

**(IN THE MATTER OF THE INTENDED APPEAL FROM THE JUDGMENT OF
THE RESIDENT MAGISTRATE, MRS. M. MUIGAI DATED 12TH AUGUST,
1997 IN RMCC NO. 4973 OF 1995 AT MILIMANI COMMERCIAL COURTS,
NAIROBI)**

DRAGON PEARL CHINESE RESTAURANT LTD.....APPLICANT
-VERSUS

JOHN MAKOKHA OTWISA.....RESPONDENT

RULING

In this application the applicant is asking for leave to appeal out of time against the Judgment delivered on 12.8.1997 in RMCC No. 4973 of 1995.

In support of the application, the applicant says that the case was handled by the firm of Jeniffer Shamalla & Co. which is not functioning now. The applicant relies on the affidavits filed in support.

The application is opposed on the grounds that no reason has been given for the delay in filing the appeal.

The applicant says that following the judgment, they deposited the decretal amount and applied for the proceedings which took long to be supplied. Mr. Njenga explains that he has had difficulties getting the files from the former advocates which is no longer in operation. I note that the present advocates came into this matter after the applicant realised that the appeal had not been lodged by the former advocates and this came to their knowledge when an application seeking to set aside the Stay of Execution was made.

I appreciate what Ombete, advocate for the Respondent says about the time this appeal has taken to be filed but for the greater interest of justice and since the decretal amount had been deposited with the court, I shall allow the application. The applicant shall lodge the appeal within 21 days and failure to do the application shall stand dismissed. The applicant shall pay the costs of this application.

Dated and delivered at Nairobi this 24th day of May, 2000.

KASANGA MULWA

JUDGE