

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OMOLO J.A (IN CHAMBERS)
CIVIL APPLICATION NO.NAI. 214 OF 1998

BETWEEN
NATIONAL CEREALS & PRODUCE BOARD.....APPLICANT
AND
ALBERT ONGARO.....RESPONDENT

R U L I N G

I have read the notice of motion and the affidavit in support thereof. The applicant has fully explained the circumstances which led to the notice of appeal being filed out of time. I do not understand Mrs Nyakundi to be saying that the explanation given is false. All she appears to say is that even if the explanation were true it would only show negligence on the part of counsel and that the applicant has remedy against counsel for such negligence I do not think that is a proper basis upon which I can exercise my discretion. I accept the explanation of Mr. Mugo that his court clerk failed him and that as soon as he discovered this he acted immediately and filed the notice of appeal. The failure to file the record of appeal in time is fully explained and the explanation is not really challenged. Accordingly I allow this motion and make the following orders:-

- 1.The notice of appeal filed on the 6th June, 1997 be and is hereby deemed to have been filed within time.
- 2.The record of appeal must be filed within 14 (fourteen) days from to-day's date.
- 3.The costs of this motion shall be in the intended appeal

Dated and delivered at Nairobi this 14th day of January,

1999.

R.S.C. OMOLO

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JUDGE OF APPEAL

I certify that this is a true copy of the original.
DEPUTY REGISTRAR