



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

Civil Appli 32 of 1998

MUNGAI MUNA.....APPLICANT

AND

ESMAEL N. MUNGAI.....RESPONDENT

(Application for leave to appeal out of time in an intended appeal from the judgment  
and decree of the High Court of Kenya at Nairobi (Akiwumi, J.) dated 5th June, 1989

in

H.C.C.C. NO. 2770 OF 1981)

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**RULING:**

In this application, the applicant has sought extension of time within which to lodge his intended appeal to this Court. On 18th October, 1993, time to lodge the record of the applicant's intended appeal to this Court was extended by 30 days from the date hereinabove mentioned. According to the applicant's supporting affidavit to the present application, he was financially incapacitated and was therefore unable to lodge the record of his intended appeal within the extended time. He now has sought and obtained assistance from *Kituo Cha Sheria* which has agreed to prepare the notice and the record of appeal for him if time in respect thereof is extended.

It is now over five years since the time for lodging the record of the applicant's intended appeal was granted on 18th October, 1993. On 19th September, 1997, his notice of appeal was struck out by this Court for the reason of his non-compliance with the order of the single judge of this Court dated 18th October, 1993 extending time by 30 days within which he was to lodge his intended appeal. His present application does not seek extension of time within which to lodge the notice of appeal. In the circumstances and in view of the dilatoriness in the applicant's present application, I decline to exercise my discretion under *rule 4* of the Court of Appeal Rules in favour of the applicant. In the result, the applicant's application for extension of time within which to lodge his intended appeal to this Court against the decision of the superior court given on 5th June, 1989 is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 2nd day of February, 1999.

J.E. GICHERU

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JUDGE OF APPEAL