



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

**Civil Appli 38 of 1999**

**KENYA NATIONAL ASSURANCE CO.**  
**LTD.....APPLICANT**

**AND**

**JOSEPH M.**  
**MBASU.....RESPONDENT**

**(An application for extension of time in an intended appeal from a judgment of the High Court of Kenya at Nairobi (Amin, J.) dated 18th June, 1997**

**in**

**H.C.C.A. NO. 122 OF 1993)**

\*\*\*\*\*

**RULING:**

At the hearing of this application on 22nd April, 1999 the applicant's supplementary affidavit was excluded from the record of the said application for the reason that it was filed without the requisite leave or otherwise in compliance with **rule 43(2)** of the Court of Appeal Rules, hereinafter called the Rules. Resulting from that exclusion, the applicant relied on the supporting affidavit of Johnson Dedan Murimi. In that affidavit, the applicant's failure to lodge the record of appeal within the prescribed period was because counsel dealing with the matters concerning the applicant had left the firm of Murimi & Company, Advocates without handing over the applicant's file. It is not clear to whom the file in question was to be handed over. the present application was filed on 16th February, 1999 and from its record, the Notice of Appeal was lodged on 26th June, 1997. After the exclusion of the supplementary affidavit referred to above, there is nothing in the supporting affidavit to the applicant's application which explain the delay in filing the record of appeal within the prescribed period. I am therefore unable to exercise my discretion in favour of the applicant under **rule 4** of the Rules. In the result, the applicant's application is dismissed with costs assessed at K.Shs. 3,000/- and payable to the respondent within the next 30 days from the date of this ruling failing which execution to issue.

**Dated and delivered at Nairobi this 26th day of April, 1999.**

**J.E. GICHERU**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**