

REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI
Civil Appli 4 of 1998

PHILIP GACHERE APPLICANT

AND

MAINA MUCHIRI RESPONDENT

(Application for extension of time to file Notice of Appeal and Record of Appeal from the

Judgment of (Hon. Justice Khamoni) dated 14th October, 1996

in

H.C.C.C. NO. 99 OF 1996)

R U L I N G

This is an application for an extension of time to file the notice of appeal and the record of appeal under rule 4 of the **Rules of this Court**. **The applicant had filed an appeal being Civil Appeal No. 103 of 1997** which was struck out on 13th November, 1997 as having been filed out of time without leave. It is true that the Court has a wide and unfettered discretion to extend time but such discretion, as in all cases must be exercised judicially. Here, I have not been informed why the appeal had not been filed in time. No explanation has been given why an extension was not sought before the appeal was filed without leave or a valid extension. Even today there has been no satisfactory or any explanation. I have no material before me why I should grant any indulgence or exercise my discretion in favour of the applicant. When there is no explanation or material, there can be no indulgence.

Upon a careful consideration of all the circumstances of this case, I am not persuaded nor satisfied that this is a fit or proper case for the exercise of my discretion. Accordingly, I dismiss the application with costs

Dated and delivered at Nairobi this 22nd day of April, 1999.

A.A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR