



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: OMOLO, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI 190 OF 1998

BETWEEN

JOSEPH MWAURA NDERI

T/a NDERI ENTERPRISES .....APPLICANT

AND

CIRCULAR DISTRIBUTORS LIMITED .....RESPONDENT

(An application for extension of time to file record of appeal in an intended appeal  
from a ruling and order of the High  
Court of Kenya at Nairobi (Pall J) dated 4th November, 1997

in

H.C.C.C. NO. 5645 OF 1990)

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**R U L I N G**

Had this application been opposed, I certainly would have rejected it. The judgment the applicant seeks to challenge on appeal was delivered way back on 4th November, 1997. The affidavit in support of the application says the applicant applied for proceedings and judgment on 10th November, 1997. It is not stated whether the application for proceedings was written or oral; no copy of the letter applying for the proceedings is annexed to the affidavit. The notice of appeal itself was lodged on 11th November, 1997. That was within the time allowed.

But the applicant was told on 6th February, 1998, that the proceedings were ready and yet he did not collect the same until 5th March, 1998. That was one whole month wasted and no explanation for it is attempted in the supporting affidavit. Mr. Katwa who argued the application before me told me that the letter from the court asking them to collect the proceedings reached them late. That may or may not be true; the respondent, though served has chosen not to put its side of the story before me.

The applicant next says that between March and 22nd June, 1998, he was waiting for the certificate of delay to be signed by the deputy registrar. Strictly that is neither here nor there because a certificate of delay is not covered by the proviso to rule 81, but since the applicant puts it down as a cause of the delay and it is not opposed, I suppose I can take it into consideration. The delay between June and 3rd August, 1998 when the motion was filed is explained on various stated grounds which remain unchallenged and may well be true. Accordingly, I reluctantly grant to the applicant the extension he seeks and order that the record of appeal must be lodged within fourteen days of the date hereof. The costs of this motion shall be costs in the intended appeal and those shall be my orders.

Dated and delivered at Nairobi this 20th day of May, 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