

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OWUOR, J.A (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 112 OF 1998
BETWEEN

MWALIMU CO-OPERATIVE SAVINGS & CREDIT LTD.APPLICANTS
AND
KERRY W. MUEMA
T/S LITTLE TESSIE SALOON & FIVE OTHERSRESPONDENTS

(Application for extension of time to file Notice and
Record of appeal out of time from the Ruling and
Order of the High Court of Kenya at Nairobi (Hon.
Justice Aganyanya) dated 22nd February, 1995
in
H.C.C.C No. 50 of 1995)
R U L I N G

The orders sought for in this application brought under rules 4 and 41 of the Rules of this Court are that:-

"1.The applicant be allowed to file the Notice of Motion out of time.

2.The applicant be allowed to file the record of appeal out of time against the ruling/order of the Hon. Justice D.K.S Aganyanya dated 22nd February, 1995, and that the costs of the application be provided for".

On 22nd day of February, 1995 the superior court (Aganyanya J) restrained the applicants, Mwalimu Co-operative Savings & Credit Society Ltd. from evicting or auctioning the property of the respondent, Kerry Muema, trading as Little Tessie Saloon & Five others, until the hearing and determination of a case that is going on between the parties.

Pursuant to instruction given by the applicant, appeal No. 99 of 1996 was accordingly filed. The same was first listed for hearing before this Court on 9th of May, 1997, it was however taken out of that day's hearing list to allow Mr. Mboroki appearing for the appellant to rectify what was an apparent mistake in the dating of the ruling. The appeal was once more listed for hearing on 4th of May, 1998. This time round the Court struck it off on account of being incurably defective.

Mr. Mboroki contends that the appeal raises serious issues of law and the delay that has occurred before filing of the appeal has not been inordinate on account of the above facts.

Mrs. Kasango appearing for the respondents has not objected to the application and in my view rightly so. I am satisfied that there is enough ground upon which to exercise my discretion in favour of the applicant and grant the two orders sought for.

In that regard, the application is hereby granted. The applicant shall file its Notice of appeal within seven days from today's date and thereafter file its record of appeal within 14 days from today's date. The respondent shall have costs of the application.

Dated and delivered at Nairobi this 28th day of May,1999.

E. OWUOR

JUDGE OF APPEAL

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

DEPUTY REGISTRAR