



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI
Civil Appeal 157 of 1995**

**BANK FUR ARBEIT UND WIRTSCHAFT
A.G.....APPELLANT**

AND

ATTORNEY-GENERAL

**OFFICIAL RECEIVER, KEN-REN CHEMICALS & FERTILIZERS
LIMITED.....RESPONDENTS**

(Appeal from an order of the High Court of Kenya at Nairobi (Hon. Lady Justice

Aluoch) dated 9th day of July, 1992

IN

H.C.C.C. NO. 5739 OF 1990)

RULING OF THE COURT

The ruling of the superior court intended to be appealed against was delivered on 9 July 1992. The ruling of this Court on reference from the decision of a single judge of this Court referring extension of time to file a notice of appeal was delivered on 30 June 1995 when an extension of time of five days from that date was granted. No other order for any extension was ordered. Mr Nowrojee very properly concedes that a relief sought but not granted is deemed to have been refused. There is, therefore, no valid extension of time for the filing of the record of appeal. The argument that once time is extended to file a notice of appeal Rule 81 applies and there are further 60 days to file the record is one with which we do not agree. Accordingly in the absence of any valid extension of time for filing the record, it is ex facie out of time and therefore incompetent. The appeal is struck out but with no order as to costs.

Dated and delivered at Nairobi this 8th day of July, 1999.

R.O. KWACH

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.