



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL

AT NAIROBI  
(CORAM: KWACH, J.A. (IN CHAMBERS))  
CIVIL APPLICATION NO. NAI. 3 OF 1999  
BETWEEN

WAMBUA MULILI ..... APPLICANT

AND

DISTRICT COMMISSIONER KITUI

BENJAMIN MUTUNGA MUTEMA ..... RESPONDENTS

(An application for extension of time to file record  
of appeal in the intended appeal against the Ruling  
of the Hon Lady Justice Owuor (now a Judge of  
Appeal) and Hon Mr. Justice Shaikh Amin delivered at

Nairobi on 30th June, 1998

in

H.C.MISC.APPLICATION NO. 760 OF 1991)

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R U L I N G

This is an application under **rule 4** of the Court of Appeal Rules for extension of time to file a record of appeal. The decision against which *Wambua Mulili* (the applicant ) wishes to appeal was given on 30th June, 1998. A notice of appeal was filed on 1st July, 1998 and copies of proceedings were supplied on 24th September, 1998. The present application was not brought until 7th January, 1999.

Mr Kiiru who appears for the applicant says that the initial failure to file an appeal was the fault of the Advocate who was previously acting for the applicant. Mr Kiiru himself was instructed by the applicant early in October 1998, but he took no steps to lodge an appeal. His explanation for this lapse is that he needed time to familiarise himself with the issues in the case. He also said something to the effect that in December most offices are closed and people do not work. The effect of all this is that the prolonged delay from 1st July 1998 to 7th January, 1999 has not been satisfactorily accounted for and on this ground alone this application should fail.

There is a second reason why the application must fail. On the Notice of Motion the applicant only seeks an extension of time to lodge a record of appeal. The time stipulated under the Rules for lodging an appeal having passed, there is no valid notice of appeal in existence. So even if I had found that the delay could be excused, it would have been pointless to grant the relief sought because a record of appeal cannot be filed without a notice of appeal. In the end this application fails and is dismissed with costs to the second respondent.

**Dated and delivered at Nairobi this 13th day of July, 1999.**

**R. O. KWACH**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**