



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAKURU  
(CORAM: LAKHA, J.A. (IN CHAMBERS))  
CIVIL APPLICATION NO. NAI. 177 OF 1999**

**BETWEEN**

**HARRISON MWANGI.....APPLICANT  
AND  
ESTHER WAMBUI NJENGA  
T/A NAIVASHA GILGIL TIMBER YARD .....RESPONDENT**

**(Application for extension of time to file an appeal from  
the Judgment of the High Court at Nakuru (Hon. Justice  
Rimita) dated 14th December, 1998**

**in**

**H.C.C.C. NO. 639 OF 1995)**

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**RULING**

This is an application under rule 4 of the Rules of this Court ("the Rules") for an extension of time to file the record of appeal. It is supported by an affidavit and is based on the ground that by the time the copies of the proceedings and judgment were supplied on 26th March, 1999 the time for the filing of the appeal had expired. As no copy for the application was sent to the other side the applicant could not avail himself of the automatic extension under the proviso to Rule 81 of the Rules. This application was filed on 21 June 1999, about three months later.

It is true that under rule 4 of the Rules the Court has the widest measure of discretion. But however wide that discretion it must be judicially exercised. Mr. Mundia, for the respondent, contends and, in my view rightly, that there has been inexcusable delay. Speaking for myself I consider that a delay of about 3 months in filing this application is inordinate. What is unfortunate is that there is no explanation in the supporting affidavit accounting for this delay. Nor was there any during the submissions. Rules of Court are to be obeyed and if there is to be an extension there must be material before the Court why a discretion should be exercised. Here there is none. Where there is no explanation there can be no indulgence. Having regard to all the circumstances, I must decline, as I hereby do, to exercise my discretion in favour of the applicant as I do not consider this to be a proper case for any indulgence to be extended.

Accordingly and, for the reasons above stated, I dismiss this application with costs.

**Delivered at Nakuru this 23rd day of September, 1999.**

**A. A. LAKHA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**