

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: TUNOI, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. 70 OF 1999**

BETWEEN

**KAMAU JOHN KINYANJUI APPLICANT
AND
HEZEKIAH J. WANYOMO RESPONDENT**

(Application for extension of time to file Record of Appeal from a judgment and decree of the High Court of Kenya at Nairobi (Khamoni, J.) dated 27th day of October, 1999

in

H.C.C.C. NO. 570 OF 1996)

R U L I N G

I regret I have to reject this application. I will not exercise my discretion in favour of the applicant by extending time to lodge the record of appeal for two reasons.

The applicant has not deemed it, for unknown reasons, necessary to attach for my ease of reference a certificate of delay issued by the Deputy Registrar of the superior court.

So, this court cannot dispel the suggestion that no one for sure is able to establish when the proceedings were received by the applicant. They could have been received last year.

Again, no explanation has been offered as to why this application was not lodged by 4th January, 1999, at the latest, that is on the expiry of the 60 days after the filing of the Notice of Appeal.

In the absence of any explanation or material before me I am unable to exercise my discretion in favour of the applicant. Where there is no explanation, there can be no indulgence.

As to whether the applicant has been diligent and free from dilatory practices, is a matter that has not been discharged to my satisfaction.

This application must fail and is dismissed with costs.

Dated and delivered at Nairobi this 30th day of September, 1999.

P. K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR