

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
(CORAM: OMOLO, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 88 OF 1997
BETWEEN**

SAMWEL NDURA KANYARAAPPLICANT

AND

MARY NJAMBIRESPONDENT

(Application for extension of time to file Notice of Record of Appeal from an Order of the High Court of Kenya at Eldoret (Justice Aganyanya) dated 3rd February, 1994

in

H.C.C.C. NO. 152 OF 1995)

R U L I N G

It is agreed that a previous appeal, No. 152 of 1995, was struck out on the 23rd September, 1996. It is equally agreed that when the appeal was struck out the applicant was in fact absent. The applicant says he only came to know about the striking out on the 20th March, 1997 when he came to the court's registry to check on the matter. He filed his present motion thereafter, apparently on the same day. My Njuguna for the respondent asks me to reject these assertions on the basis that they are not contained in the notice of motion or in any of the supporting affidavits but I do not think that alone is good reason for rejecting them particularly in view of the fact that the applicant was absent when his appeal was struck out. 23rd September, 1996 to 20th March, 1997 would appear on its face, to be an inordinate delay for filing a simple application such as this one but I think the applicant has satisfactorily explained the delay. He was unaware that his appeal had been struck out and when he became aware of that fact he promptly filed this motion.

I accept his explanation for the delay and that being the view which I take of the matter, I allow the applicant's motion dated 20th March, 1997 and make the following orders:-

- (1) the applicant shall file and serve his notice of appeal within seven days of the date hereof.
- (2) the applicant must then file his record of appeal within 21 (twenty one) days from the date of filing the notice of appeal.
- (3) the costs of this application shall be in the intended appeal.

Those shall be my orders in the motion.

Dated and delivered at Nakuru this 24th day of September, 1999

R. S.C .O MOLO

JUDGE OF APPEAL

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

DEPUTY REGISTRAR