

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: LAKHA, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 208 OF 1998
BETWEEN**

**FRANCIS KIHONGE NG'ANG'AAPPLICANT
AND
KENYA COMMERCIAL FINANCE COMPANY LIMITEDRESPONDENT**

**(Application for extension of time from a Ruling of the High
Court of Kenya at Nairobi (Justice Ole-Keiwua) dated 9th March, 1998
in
H.C.C.C. NO. 1064 OF 1996)**

RULING

This is an application under **rule 4** of the Rules of this Court seeking an extension of time for the filing of the record of appeal from the ruling of the superior court given on 9 March, 1998 whereby the applicant's defence was struck out. The Notice of Appeal was filed within the prescribed time. An application for copies of proceedings (copied to the other side) was made on 10 March, 1999 and these were collected on 8 May, 1998 . The last day, therefore, for the filing of the appeal, as Mrs. Ngugi concedes and, rightly in my view, was 7 July, 1998 . Yet no appeal was filed by then.

This application was made on 21 August, 1998.

When pressed, Mrs. Ngugi submitted that she was waiting for the Certificate of Delay. She, however, read the **rule 81** and freely and frankly agreed that there was no ambiguity in the rule. Nor was it capable of a misinterpretation. It did not extend to certificate of delay.

In the circumstances, I see no mistake. None was alleged either in the Notice of Motion or in the supporting affidavit.

Mrs. Ngugi, however, strongly urged that the discretion under **rule 4** is unfettered. This is true. But like all discretion it must be judicially exercised. Here, there is no material before me on which I can base an exercise of my discretion in favour of the applicant. Nor do I think, having regard to the inordinate delay already occasioned, that this is a fit and proper case for the exercise of my discretion which I decline to exercise.

Accordingly, I dismiss the application but make no order as to costs.

Dated and delivered at Nairobi this 14th day of October, 1999.

A.A. LAKHA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR