

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI**

CIVIL APPLICATION NO. 100 OF 1999

**JOHN MWANDIA.....APPLICANT
AND
MOHAMMED SHARIFF CHAUDHRY.....RESPONDENT**

**(An application for leave to file notice of appeal and
record of appeal out of time, in an intended appeal
from the order of the High Court of Kenya at Nairobi
(Hon. Justice Moiwo Ole Keiwua) dated 5th February,**

**1999
in
H.C.C.C. NO. 788 OF 1995)**

R U L I N G

I have before me an application brought under rules 4 and 42(2) of the Rules of this Court for extension of time to lodge a notice of appeal and record of appeal out of time. The ruling which the applicant intends to appeal against was delivered by the superior court (Ole Keiwua, J) on 5th February, 1999 in **H.C.C.C. No. 788 of 1995** which was consolidated with **H.C.C.C. No. 3529 of 1995**. The said ruling was delivered on 5th February, 1999. A copy of that ruling is not in the record of the application before me. It is therefore not possible for me to say what it is all about save to say that it must have been an application for review which was dismissed by the learned judge. The application itself is before me at page 51 of the record of the application and it seeks (inter alia) review of orders made the ruling delivered on 12th May, 1997. Even that ruling is not before me in the said record.

In this state of affairs I am unable to make any orders as sought as there is no sufficient material before me to enable me to exercise my discretion (which undoubtedly I have) to grant extension of time.

The applicant's present advocate depones to the effect that the previous advocates did not receive any notice of delivery of ruling dated 5th February, 1999. The respondent's advocate has annexed, to his affidavit, a copy of the said notice (addressed to both advocates on record) which was received by him on 8th February, 1999. If he received the same on 8/2/99 and took steps thereon (to extract the order) I do not see how the then advocates for the respondent did not receive the same. It is common ground that none of the advocates on record attended the delivery of ruling. However, there is no affidavit by any advocate from the firm of Njenga Muchiri & Company to the effect that the firm did not receive the said notice.

After being aware of the ruling on 23rd March, 1999 the present advocates of the respondent did not file this application until 30th April, 1999. In the peculiar circumstances of this application the delay of over one month in filing this application is somewhat inordinate and has not been explained to my satisfaction. But I say no more on all this as there is not sufficient material before me, as I said earlier, to enable me to exercise my discretion.

This application is dismissed with costs.

Dated and delivered at Nairobi this 23rd day of July, 1999

A.B. SHAH

JUDGE OF APPEAL

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

DEPUTY REGISTRARY