



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NYERI  
CORAM: SHAH, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI 205 OF 1999 (NYR 16/99)  
BETWEEN

M.D. PATEL  
MATHEW MUTHOGA GIKONYO .....APPLICANTS  
AND  
PETER NDUNGU NDIRANGU .....RESPONDENT

(Application for extension of time to file and serve notice & record of appeal from a judgment of the High Court of Kenya at Nyeri (Juma J) dated 11th March, 1999

in  
H.C.C.C. NO. 198 OF 1997)

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**R U L I N G**

I have, before me, an application brought under rule 4 of the Rules of this Court, for extension of time to lodge a notice of appeal and record of appeal out of time.

The judgment of the superior court (Juma, J) was delivered on 11th March, 1999. The applicant's counsel wrote to the applicant's insurers advising them of the fate of the suit by a letter dated 15th March, 1999, enclosing a copy of the relevant judgment. In that letter the said advocates informed the insurers that they would notify them of the figure of costs when taxed. The advocates also enclosed the final fee-note. The insurers responded some two months later saying that in their view the damages awarded were on the higher side and instructed the advocates to appeal.

Lodgment of a notice of appeal is a matter of course. A careful advocate would lodge the same *ex abundanti cautela*. In this case the advocates did not say that they advised filing of an appeal. It was the insurers who thought an appeal ought to be filed. They took nearly two months to decide that.

The reasons for delay in regard to instructions to lodge the notice of appeal have not been shown to my satisfaction. Counsel, when asked why he did not lodge the notice of appeal as a matter of abundant caution, simply stated that it was his mistake. I do not think it was a mistake. Putting it simply it was either inaction or no desire to appeal.

But the matter does not stop there. This application was filed some one month and 23 days after receipt of instructions to lodge an appeal. There is no explanation at all for this delay.

In these circumstances, I am not persuaded to exercise the almost unfettered discretion that I have to extend time as sought. This application is dismissed with costs.

Dated and delivered at Nyeri this 27th day of October, 1999.

A. B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR