



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM: LAKHA, J.A. (IN CHAMBERS))**  
**CIVIL APPLICATION NO. NAI. 126 OF 1999**  
**BETWEEN**

**ARTHUR KANAI KAMAU ..... 1ST APPLICANT**  
**ZACHARY MWANGI KAMAU ..... 2ND APPLICANT**  
**AND**  
**CAROLINE NJERI MWICIGI ..... RESPONDENT**

**(Application for extension of time to file an appeal out of  
time from the Judgment of the High Court of Kenya at  
Nairobi (Justice Aganyanya) dated 17th March, 1998  
in  
H.C.C.C. NO. 160 OF 1998)**

\*\*\*\*\*

**R U L I N G**

This application for extension of time to file the notice of appeal and the record of appeal was filed on 27 May, 1999 within a week of Civil Appeal No. 154 of 1998 being struck out on 20 May, 1999. There is, therefore, no question of delay involved.

The application is based on the ground that there was a mistake on the part of the advocate in having miscalculated the date from which the time commenced to run for the purpose of computing the time within which the appeal had to be filed.

The Certificate of Delay included in the original appeal which was struck out and the one attached to the present application states in **paragraph 6** as follows:

"By letter dated 20th May 1998 the Advocates were notified that the proceedings and judgment were ready for collection on payment of court fees."

It is, therefore, clear that as at 20 May, 1998 the proceedings and judgment were ready for collection and, in my view, that is the date on which time commenced to run.

Accordingly, the last day for filing of the appeal was 19th July, 1999. It was for this reason that the appeal was struck out by the Court.

Mr. Kamonde, Advocate for the applicants, however, now says that **paragraph 8** of the Certificate of Delay states that time taken for the preparation and delivery of the papers was upto 19th June, 1998 as per **paragraph 8** which is as follows:

"The time required for preparation and delivery of the certified copies of the proceedings and judgment was from 23rd March 1998 until 19th day of June 1998 that is to say 88 days."

In my view, there are two answers to Mr. Kamonde's submission. First, **paragraph 8** refers to certified copies of proceedings and judgment. **Rule 81** under which the Certificate of Delay has been issued provides for an extension in respect not of certified copies but merely copies. Nor does **Rule 85 of the Rules** relating to compilation of the record of appeal require the proceedings or the judgment to be certified.

Secondly, **paragraph 6** of the Certificate of Delay states that the requisite copies of proceeding and judgment were ready for collection on 20 May, 1998. If there are two Clauses or parts of a document

repugnant to each other, the first will be received and the latter is rejected if **paragraphs 6 and 8** cannot be reconciled because of apparent inconsistencies, although the two paragraphs in my view refer to two different categories of documents. Paragraph 6 being first it prevails over **paragraph 8** assuming they refer to same class of documents.

Mr. Kamonde, when pressed, conceded that there was no ambiguity or misdescription or misinterpretation of the Rules at all. He contended it was simple human error.

In these circumstances, I am of the view that there is no material before me on which I can base myself to grant an extension of time, howsoever wide and unfettered the discretion is **under rule 4 of the Rules**. I must decline to exercise my discretion. Accordingly, the application fails and is dismissed with costs.

**Dated and delivered at Nairobi this 1st day of November, 1999.**

**A.A. LAKHA**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**