

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: LAKHA, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 184 OF 1999
BETWEEN**

**EVANS OBALA ONYANGOAPPLICANT
AND
THE INTERNATIONAL CENTRE OF INSECT
PHYSIOLOGY AND ECOLOGYRESPONDENT**

**(Application for leave to file an intended appeal out of time
from a Judgment of the High Court of Kenya at Nairobi
(Ringera, J.) dated 25th September, 1996
in
H.C.C.C. NO. 114 OF 1995)**

R U L I N G

This is an application by the unsuccessful plaintiff under **rule 4** of the **Rules of this Court** (the Rules) for an extension of time to file the Record of appeal out of time, the notice of appeal having been filed within the prescribed time.

The Judgment and decree of the superior court (Ringera, J.) the subject of the intended appeal was given on 25 September, 1996. The application for copies of proceedings and judgment was made on 25 September, 1996 but it was not copied to the respondent in terms of **rule 81** of the Rules. Accordingly, the appeal had to be filed within sixty days from the date of the Notice of Appeal i.e. 25 September, 1996 and such last date was 24 November, 1996. The papers as per the letter from the Registrar dated 13 April, 1999 were then ready. The present application was not filed until 20 July, 1999.

It appears to me that there has been inordinate delay in making this application. It was not made until after two years and eight months from the last day for the filing of the appeal. And in fact it took the applicant about three months to file the present application after he received the papers. Assuming that notification from the Registrar was received as the applicant's advocate submitted on 8th June, 1999, it took about a month and a half to make the application. All these delays have remained unexplained.

In these circumstances and, in the absence of any explanation for the delay, I decline to exercise my discretion in favour of the applicant. The rule is that where there is no explanation there can be no indulgence. In the result, the application is dismissed with costs.

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

A.A. LAKHA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR