

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GICHERU, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 218 OF 1997

BETWEEN

JOSEPH KANGETHE KAGIRIAPPLICANT

AND

GEMA MUTHIRURESPONDENT

**(An application to file a Notice and Record of Appeal out of
time in an intended appeal from a Judgment of the High
Court of Kenya at Nairobi (Justice Mbogholi) dated 31st
October, 1996**

in

H.C.C.C. NO. 4926 OF 1990)

R U L I N G

In this application, the decision of the superior court intended to be appealed against was given on 31st October, 1996. The applicant who claims not to have been aware of the aforesaid date learned of the decision on 14th November, 1996 and on 27th November, 1996 he lodged his notice of appeal. This was 13 days after learning of the decision intended to be appealed against on 14th November, 1996. Notwithstanding his learning of this decision on the aforementioned date, the applicant, nevertheless, did not apply for copies of the proceedings and judgment in the superior court until 16th January, 1997 which was clearly more than 30 days from the date he learned of the decision he intends to appeal against on 14th November, 1996.

He cannot therefore benefit from the proviso to rule 81(1) of the Rules of this Court which would mean that as at the date of filing this application on 22nd August, 1997 a period of nearly nine months had elapsed since 14th November, 1996. That is an inordinate delay in respect of which I would be disinclined to grant the applicant extension of time within which to lodge the record of appeal. In that event, the extension of time within which to lodge the notice of appeal would be purposeless. Consequently, I am unable to exercise my discretion under rule 4 of the Rules of this Court in favour of the applicant with the result that his application for extension of time within which to lodge the notice and record of appeal is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 23rd day of January, 1998.

J.E. GICHERU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR

