

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

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

CIVIL APPLICATION NO.NAI 228 OF 1997 (KSM 32/97)

BETWEEN

CHARLES OMBATI ONTIRI.....APPLICANT

AND

EBISIBA BOSIBORI ANGWENYI.....RESPONDENT

**(Application for extension of time for filing Notice of
Appeal from the Ruling and Order of the High Court
of Kenya at Kisii (Mr Justice Mbaluto) dated 19th
July, 1996**

in

H.C.C.C. NO. 117 OF 1992)

Though the application does not appear to be opposed that is not a reason to deprive me of my duty to see if I should exercise my discretion in favour of the applicant. I accept the explanation by the applicant that though the ruling proposed to be appealed against was delivered on the 19th July, 1996, the applicant did not become aware of it until sometime in November, 1996. But from that period the applicant was perfectly aware that a ruling had been made against him. This motion was not filed until the 7th August, 1997. In his supporting affidavit the applicant does not give an explanation as to what happened between November, 1996 when he learned of the ruling and the 7th August, 1997 when he filed this motion. That is a period of some nine months. When I asked Mr. Soire what the applicant was doing during that period his answer is that he had no instructions on the matter. The applicant says in paragraph 10 of his supporting affidavit that he did not file his notice of appeal and record of appeal for reasons beyond his control. There were reasons beyond his control between 19th July, 1996 and November, 1996. But I can see no reasons beyond his control between November, 1996 and 7th August, 1997. To enable me exercise my discretion in his favour, the applicant was under obligation to give me some sort of explanation for that delay of some nine months. No such explanation is forthcoming.

That being so, I refuse to exercise my discretion in favour of the applicant and the consequence of that is that this motion fails and I order that it be and is hereby dismissed with no order as to costs.

Dated and delivered at Kisumu this 24th day of March, 1998.

R.S.C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR