

IN THE COURT OF APPEAL

AT KISUMU

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

CIVIL APPLICATION NO. NAI. 27 OF 1998

BETWEEN

JOSIAH OCHARO NYANCHAMAAPPLICANT

AND

ISMAEL ONDIEK.....RESPONDENT

(Application for extension of time within which to lodge an appeal out of time from the Judgment of the High Court of Kenya at Kisii (Mr. Justice V.V. Patel) dated 30th June, 1993 in H.C.C.C. NO.222 OF 1997)

R U L I N G

I refuse to exercise my discretion in favour of the applicant. His previous appeal to this Court was struck out on 14th March, 1997. He says that thereafter he became sick and was suffering from cerebral malaria. He is some kind of a civil servant and he has attached a sick-sheet to support his contention that he was sick. The dates are all confined to July, 1997. There is no explanation as to what he was doing between 14th March, 1997 when the appeal was struck out and the month of July, 1997 when he started being treated for malaria. Again there is no explanation for the period after 27th July, 1997 when he stopped attending treatment and the 12th February, 1998 when he filed this motion. I do not believe him when he says that for all that period he was looking for the order which he had left out of his previous appeal. It could not have taken him some nine or so months to look for that order. There ought to be an end of litigation. The order the applicant seeks to appeal against was made way back in 1993. He is obviously using every excuse to drag out this litigation. He has not satisfactorily explained to me the cause of the present delay and that being so I reject his motion for extension of time and I dismiss the same but with no order as to costs. I so order.

Dated and delivered at Kisumu this 27th March, 1998.

R.S.C. OMOLO

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR