



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: SHAH J.A. IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 309 OF 1997

BETWEEN

1. KIHONGE NGANGA

2. LAURA WAITHERA

3. ALICE MUMBI.....APPLICANTS

AND

KENYA COMMERCIAL FINANCE COMPANY LTD.....RESPONDENT

(Application for extension of time to file and serve  
Memorandum Appeal and Record of Appeal in an intended  
(Appeal from a Judgement, of the High Court of Kenya  
at Nairobi (Mr. Justice Ole Keiwua) dated 16th May, 1997

In

H.C.C.C. No. 1041 of 1996)

R U L I N G

I have before me an application for extension of time to file a fresh notice of appeal and a record of appeal out of time. The application is made under rule 4 of the Rules of this ICto uirst .not in issue that I have, as a single judge of this court, jurisdiction to extend such time, the original appeal filed by the applicant having been struck out.

Civil appeal No. 236 of 1997 was struck out on 2nd day of December, 1997 as the record of that appeal was served on the respondent some ten days out of time. There was a further problem although not alluded to, that is that the decree appealed against had the word "decree" missing therefrom.

The appeal, as I have said, was struck out on 2nd day of December, 1997. This application was filed on 8th December, 1997. There has therefore been no undue delay in filing this application.

The real issue taken by Mr. Ougo for the respondent is that the applicant's advocates have not adequately explained the reason for the ten day delay in serving the record of appeal, in Civil Appeal No. 236 of 1997. He said it was not enough to say, merely, that it was an oversight. But in my view an oversight is an oversight. It cannot be further explained. It does happen that Counsel do forget that service of record of appeal must be effected within seven days of filing of the appeal. It can happen to the best of us. Should the litigant suffer for Counsel's such oversight when the delay was not inordinate. My answer to that is - no. I am of the view that if time can be extended, without much prejudice to the other side, it ought to be extended so as not to shut out a litigant from ventilating his grievances in the highest court in this country. It is a right - that of appeal - givReunl eb y 4s taotfu te.the Rules of this Court gives me wide discretion to extend time, subject only to requirements of justice to both sides. I do not think the respondent would be prejudiced, save for costs, if I grant the application.

The application is granted. The applicants will file their notice of appeal within seven days from today and their record of appeal within thirty days thereafter. The respondent will have costs of this application which, to save time, I assess at Kshs. 6000/=

. The payment of these costs must be made within the next thirty days failing which execution may issue.

Dated and delivered at Nairobi this 19th days of March, 1998.

**A. B. SHAH**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**