



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT KISUMU  
(CORAM: OMOLO J.A. (IN CHAMBERS))  
CIVIL APPLICATION NO.NAI.280 OF 1997 (KSM/33/97)

BETWEEN

PASKARIA NYANCHERA.....APPLICANT

AND

CHARLES RATEMO NYANGESO.....RESPONDENT

(Application for extension of time for filing and serve  
Notice of Appeal and Record of Appeal from the  
ruling and Order of the High Court of Kenya at Kisii  
(Mr. Justice Mbaluto) dated 1st July, 1997

in

H.C.C.C. NO.553 OF 1994)

**R U L I N G**

The record of this motion shows on the front and at page one thereof that the order intended to be appealed against was made on the 1st July, 1997. However, both Mr. Orengo for the applicant and Mr Kaburi for the respondent seem to agree that the order intended to be appealed against was made on the 11th December, 1996. The applicant, at the time the order was made was represented by counsel. The order having been made on the 11th December, 1996, the applicant in normal circumstances would have had upto the 25th December, 1996 to file her notice of appeal. but Christmas vacation would have set in by the 21st December so that the applicant would have had upto around the 14th January, 1997 to file her notice of appeal.

I am told her advocate died on 4th January, 1997. That must have seriously interfered with the applicant's operations. She swears that she was not aware of what was required of her. While I would not have paid much attention to the issue of lack of money, yet the death of the applicant's counsel is a matter which I cannot ignore and as I have said the consequences of such death must be unsettling to a litigant. She did not file this motion until 5th September, 1997. While that would appear to be a long period of time, I am not, in the circumstances of the present applicant prepared to hold that it amounted to an unexplained inordinate delay. Taking everything into account, I have decided to exercise my discretion in favour of the applicant and the consequence of that is that I allow this motion and make the following orders:

***(i) the applicant shall file her notice of appeal within seven (7) days of the date hereof.***

***(ii) the applicant shall file her record of appeal within twenty one (21) days from the date of filing the notice of appeal.***

***(iii) the costs of this motion shall be costs in the intended appeal.***

These shall be my orders.

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**