

IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI. 80 OF 1993

BETWEEN

WILSON KENYENGA.....APPLICANT

AND

JOELOMBORI.....RESPONDENT

(Application for extension of time to file and serve Notice of Appeal out of time from the judgment of the High Court of Kenya at Kisii (Mbaluto, J.) dated 27th October, 1995

in

H.C.C.C. NO. 201 OF 1986)

RULING:

Three times now the applicant's appeal to this Court against the decision of Mbaluto, J. in Kisii High Court Civil Case NO. 201 of 1986 has been struck out by this Court for the lapse in one form or another of counsel acting for the applicant. This last one was the failure to include in the record of appeal certified translations of three important documents which were relied on in the submissions of the parties to the trial in the superior court which documents were in Gusii language. These documents to a large measure, according to counsel, are vital to the outcome of the applicant's intended appeal. Their translations in the trial before the superior court are not contained in the record of the proceedings in that court. It is for this reason that the applicant seeks extension of time to lodge afresh the notice and record of appeal incorporating those translations.

As counsel for the respondent rightly pointed out at the hearing of this application on 23rd April, 1998, there must be an end to the lapses displayed by counsel for the applicant and in this regard, he has had more than a fair share. Counsel also pointed out that if the translations sought to be incorporated in the record of the intended appeal cannot be traced in the record of the proceedings in the superior court, then the same cannot form part of the record of the intended appeal save after leave to take additional evidence in respect thereof has been sought and obtained from this Court. That may probably be so, but an application to take additional evidence in regard to the translations sought to be incorporated in the record of the intended appeal can only be made under rule 29(1)(b) of the Court of Appeal Rules in an appeal to this Court. It does not appear to me from submissions of counsel for the applicant that he was alive to this. On account of this and for the last time, the applicant should be given an opportunity to urge his appeal in this Court. In the result and in the exercise of my discretion under rule 4 of the Court of Appeal Rules, I grant the applicant's application so that the time for filing his notice of appeal is extended by 7 days from today's date and the time for lodging his record of appeal is extended by 21 days from the date of lodging the notice of appeal in accordance with rule 74 of the Court of Appeal rules. The costs occasioned by this application which I assess at K.Shs. 3,000/- are awarded to the respondent and shall be payable to him within the next 30 days from the date of this ruling failing which execution in respect thereof to ensue.

Dated and delivered at Nairobi this 29th day of April, 1998.

J.E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR