

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: SHAH, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI 307 OF 1997

BETWEEN

DANIEL KIHARA GITHUMBI (DECEASED).....APPLICANT(

Application for extension of time in an intended appeal
from a judgment of the High Court of Kenya at
Nairobi (Mr. Justice Githinji) dated 24th September,
1998

in
P & A Cause No. 364 of 1989)

R U L I N G

The applicant seeks the following orders from me:

- 1."That time for filing record of appeal be
- 2.That the appleixtaenntd ebde. granted time to apply to the said court to issue a certificate of delay in order to compute the time for filing of the appeal
- 3.That costs of this application be costs in the intended appeal.

The relevant facts are that the applicant was dissatisfied with the judgment of the superior court (Githinji, J.) delivered on 24th September, 1996 and his advocates lodged a notice of appeal (in time) on 2nd October, 1996. The applicant's advocates also sought copies of proceedings and judgment by their letter of 26th September, 1996, lodged in Court on 2nd October, 1996. That letter was not copied to advocates for the respondent so that the applicant did not have the benefit of the proviso to rule 81(1) of the Rules of this Court.

Mr. Munene who appeared for the applicant stated that when he obtained the copies of proceedings and judgment there was no certificate of delay. The superior court registry prepares such certificate on request only. It does not come as of course. Normally counsel prepare it and submit it to the registry for signature and sealing.

The simple facts I have before me, germane to the application, are that there was no misunderstanding of any rule of procedure but simply there was non-reading thereof.

At least on three occasions Mr. Munene's firm was put on guard by Mr. Kamonde by informing them that proceedings were ready. Yet it took Mr. Munene three months after the last warning even to file this application. There is no acceptable explanation even for that delay. But above all what I have before me is simply inaction by counsel as well as non-reading of the rules. Such conduct does not justify the exercise of my discretion in the applicant's favour. Yet another factor is that I cannot grant the second prayer. It is not within my proviThncies.

This application is dismissed with costs.

Dated and delivered at Nairobi this 4th day of June, 1998.

A. B. SHAH

JUDGE OF APPEAL

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

DEPUTY REGISTRAR