

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: SHAH, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI 111 OF 1998 (46/98 UR)
BETWEEN

STEPHEN NDUNGU NJUGUNA.....APPELLANT

AND

JOSEPH KAHORA NGUGI.....RESPONDENT

**(Appeal from the judgment and order of the High Court of
Kenya at Nairobi (Mwera, J.) dated the 5th day of
December, 1995
in
H.C.C.C. NO. 4805 OF 1988)

R U L I N G

I have before me an application for extension of time to lodge a notice of appeal and record of appeal out of time. The application comes as a result of the appeal filed by the applicant having been struck out on 4th day of May, 1998 as the same was "lodged in this court way out of the prescribed time and that the record of appeal was served on the respondent out of time."

The judgment of the superior court, now sought to be appealed against, was delivered on 5th December, 1995. Although the copies of the proceedings and judgment were collected on 26th February, 1997 the appeal was not filed until 22nd January, 1998 and the reason advanced for this delay is that the certificate of delay was not issued by the superior court until 24th November, 1997 and that counsel for the applicant was under the impression or of the view that time to lodge a record of appeal starts from the date he gets a copy of the certificate of delay. That is how, he said, he understood the proviso to rule 81(1). Even a cursory reading of that rule leads no one to interpret it the way he did. I have said before and I say it again that simple rules if not understood or if not properly sought to be understood, does not qualify one for the exercise of the discretion of a single judge of this court, for extension of time to lodge a notice of appeal or a record of appeal out of time.

Ms. J.W. Waweru who appeared for the respondent also urged that the fact of service of the record of appeal out of time must have come as a result of the counsel simply not being aware of the rule that requires service of record within seven days of lodgment thereof. I agree. It can also be said that the advocates were simply negligent.

Another issue Ms. Waweru took up was that although she had applied for striking out of the appeal on 30th March, 1998 Counsel for the applicant did nothing to apply for extension of time during the pendency of the appeal. The applicant's counsel said that even after the service upon him of the application to strike out the appeal he was under the impression that time did not run until after he obtained the certificate of delay and that it was only upon looking up of the authorities that he saw his mistake.

The struck out appeal was filed some 330 days out of time. The explanation given for such delay is not acceptable. It is after the event that counsel has become wiser - wiser enough to read the rule properly. The cause of action, upon which the suit in the superior court was filed, arose in April, 1986, some twelve years ago. It is a fundamental principle of a law that litigation must come to an end sometime. Gone are the old time leisurely days and we live in time when everything is done electronically

and the business of the courts must be conducted more efficiently.

I was informed that in the interim period the insurance company which insured the respondent has gone into liquidation. If the suit in the superior court was heard expeditiously the same would have been concluded much earlier as not to face the eventuality of the respondent bearing the burden of the judgment for which he was insured.

The reliance by Ms. Waweru on the case of Mawji vs. Lalji & others Civil Application No. NAI 236 of 1992 (unreported) is, in the circumstances of this matter correct.

In the result I am constrained to dismiss this application with costs.

Dated and delivered at Nairobi this 10th day of June, 1998.

A. B. SHAH

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR