



**IN THE COURT OF APPEAL**

**AT MOMBASA**

**(CORAM; CHESONI, C.J. (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI. 106 OF 1998**

**BETWEEN**

**ABUDI ALI MAHADHI.....APPLICANT**

**AND**

**RAMADHAN SAIDI.....1<sup>ST</sup> RESPONDENT**

**FREIGHT FORWARDERS.....2<sup>ND</sup> RESPONDENT**

**(Application for Extension of time to file and serve a Record of Appeal against the Judgment of the High Court of Kenya at Mombasa (Mr. Justice Wambilyangah) dated 1<sup>st</sup> November, 1995**

**in**

**H.C.C.C NO. 424 OF 1992**

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**RULING**

In this Notice of Motion Mr. Abudi Ali Mahadhi who was dissatisfied with the judgment delivered on 1<sup>st</sup> November 1995, by Wambilyangah, J, in H.C.C.C. No 424 of 1992, has applied for the extension of time to lodge the record of appeal out of time. The Notice of Appeal was filed by his counsel, Mrs. Khaminwa, on 7<sup>th</sup> November, 1995.

The supporting affidavit sworn by Mrs. Khaminwa states that although she applied for certified copies of the proceedings and judgment on 13<sup>th</sup> November, 1995, the same were not made available to her till 17<sup>th</sup> December, 1997. She also had to obtain another document called “Certificate of Delay” to be included in the record of appeal. The Deputy Registrar who was supposed to sign that Certificate took his time. He signed it and delivered it to Mrs. Khaminwa on 3<sup>rd</sup> March, 1998. That was after she had made a number of visits to the Deputy Registrar’s office and followed up the matter with reminding letters but to no avail.

The application is resisted by Mr. Ngibuini for the respondents. He objects to it because according to him the delay in filing the appeal was inordinate. He says that the sixty days from the date of filing the Notice of Appeal and within which the appellant was supposed to file the appeal expired on 7<sup>th</sup> January, 1996. He further submitted that even allowing the time for the delay in supplying certified copies of the

proceedings and judgment the appellant's counsel has not acted with expedition because she was supplied with the said copies by 17<sup>th</sup> December, 1997, and could have lodged the record of appeal in February, 1998. To this contention Mrs Khaminwa replied that the appeal could not be lodged without the Certificate of Delay, which was an essential document. She added that the respondents will not be prejudiced by filing of the appeal.

Both counsel agreed that the Court has unfettered discretion in this matter and that all the same that discretion should be sparingly exercised where there has not been inordinate delay in taking action to file the record of appeal, I, with respect, agree with the two counsel. I further agree with Mr. Ngibuini that litigation in any case ought to be brought to an end. Mr. Ngibuini also argued that it had not been shown that it had not been shown that there were prospects of the appeal succeeding.

This is a case where the applicant has a right of appeal. He may lose that right only if he does not obey the rules prescribed by the law. Indeed the successful respondent has his corresponding right to enjoy the fruits of his success. There must therefore be sufficient reason for extending the time limited by the rules of the Court. Whether there would be prejudice to the respondent or whether the appeal was prospects of success are issues to be considered only after it has been established that there has been no inordinate delay and therefore there is sufficient reason for exercising the discretion in favour of the applicant.

Having taken into account the interests of both parties, I am satisfied that the applicant has persuaded me that the delay that occurred in this case was not inordinate, and, in the result, this is a proper case for the Court to exercise its discretion in his favour and enlarge the time for filing the record of appeal. Accordingly I allow the application and extend the time for filing the appeal by 21 days from the date of this order. The costs of the application shall be costs in the appeal. Those shall be the orders of the Court.

**Dated and delivered at Mombasa this 17<sup>th</sup> day of July, 1998.**

**Z.R. CHESONI**

**CHIEF JUSTICE**

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

**DEPUTY REGISTRAR**