

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
(Coram: Pall, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 131 OF 1998
BETWEEN

KAVUVU MURUAMBETI.....APPLICANT
AND
JOSIAH KARUGARI.....RESPONDENT

(Application for the extension of time to file record of appeal from a judgment of the High Court of Kenya at Embu (Etyang, J.) dated 3rd October, 1997

in

H.C.C. APPEAL NO. 4 OF 1994)

RULING:

Mr. Kariuki has opposed the application on the ground that according to the notice of appeal itself, it was lodged on 14th November, 1997. That is out of time. As such he said no competent appeal can be lodged based on that defective notice of appeal. Mr. Njage has pointed out that the notice of appeal was in fact lodged on 16th October, 1997 as the court stamp of the High Court on the notice shows. He also produced the court fee receipt which is dated 16th October, 1997 in respect of the notice. The Deputy Registrar of the Superior Court erroneously showed the date of lodgment as 14th November, 1997. There is clear evidence that the notice was lodged in fact on 16th October, 1997. Mr. Kariuki has not opposed the application on any other ground. The applicant could have lodged the appeal without seeking extension of time but counsel for the applicant chose to play safe. He applied for a formal order for extension of time. There is no inordinate delay in bringing this application. Mr. Kariuki has not argued that the intended appeal would be a frivolous one. Under rule 4, I do not have an unfaulted discretion to grant extension of time on such terms as may be just. Mr. Kariuki has not said that his client is likely to be prejudiced by the extension of time. It is the right of the applicant to seek redress from this court if he feels aggrieved by the order of the superior court.

Considering all the circumstances, I grant this application and order that the applicant shall file the record of appeal within 30 days from the date of this order.

I also hold and direct that for the purpose of the intended appeal the notice of appeal was lodged on 16th October, 1997. Costs of this application shall be in the appeal.

Made this 28th day of October, 1998.

G.S. PALL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR