



REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI
(Coram: Gicheru, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 69 OF 1998
BETWEEN

(Coram: Gicheru, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 69 OF 1998

BETWEEN

KAMSONS

LIMITED.....APPLICANT

AND

NICHOLAS

MAKAA.....RESPONDENT

(Application for extension of time to lodge a record of
appeal from the judgment of the High Court of Kenya at
Nairobi (Khamoni, J.) dated 2nd May, 1997

in

H.C.C.C. NO. 1001 OF 1989)

RULING:

In this Motion, the applicant is seeking extension of time to lodge the record of appeal in this Court's **Civil Appeal NO. 49 of 1998** so that the said record which was lodged on 18th March, 1998 be deemed to have been lodged within the extended time order dated 12th February, 1998 the applicant was granted extension of time by a single judge of this Court to lodge its notice of appeal within seven days of the date of the aforesaid order and thereafter to lodge the record of appeal within three weeks. From the supporting affidavit to the applicant's present Notice of Motion, the notice of appeal was lodged by the applicant on 18th February, 1998 but though the record of appeal was presented to and rejected by the Deputy Registrar of this Court under **rule 14 (1)** of the Court of Appeal Rules for non-compliance with **Rule 13(2)** of the said Rules on 11th March, 1998 in that some of the documentary exhibits in that record were not legible, it was not until 18th March, 1998 that that record was lodged in this Court. This was one week outside the time extended by the single judge of this Court in the consent order referred to

above. The reason for this delay as is apparent from the affidavit in support of the applicant's present Notice of Motion can only be attributed to the lapse on the part of the applicant in presenting a record of appeal to this Court on 11th March, 1998 with some of the documentary exhibits being not legible. The applicant cannot therefore expect to benefit from the exercise of the discretion of this Court under rule 4 of the Court of Appeal Rules from its own default. In the circumstances, I decline to exercise the said discretion in favour of the applicant with the result that the applicant's Notice of Motion is dismissed with costs to the respondent assessed at K.Shs. 3,000/- and payable within the next 30 days from the date hereof failing which execution to issue.

Dated and delivered at Nairobi this 9th day of October, 1998.

J.E. GICHERU

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR