



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**

**CORAM: SHAH, J.A (IN CHAMBERS)**  
**CIVIL APPLICATION NO. NAI. 145 OF 1998**

**BETWEEN**

**OTTO WOLFF INDUSTRIEAN LAGEN GMTH.....APPELLANT**  
**AND**  
**MANCHESTER OUTFITTERS LIMITED.....RESPONDENT**

**(Application for extension of time to lodge appeal from**  
**Ruling of the High Court of Kenya at Nairobi (Mr.**  
**Justice Mbito) dated 21st January, 1997**  
**in**  
**H.C.C.C. NO. 795 OF 1989**

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**RULING**

By a notice of motion, brought under rule 4 of the Rules of this court the applicant, Otto Wolff Industriean Lagen GMTH seeks extension of time to lodge a record of appeal, the relevant notice of appeal having been lodged in time on 30th January, 1997. The proposed appeal is against the ruling of the superior court (Mbito, J) delivered on 21st January, 1997.

The applicant did not make that ruling a component part of the application. It was brought to my notice through a replying affidavit filed by a director of the respondent company. The learned judge struck out the suit filed by the plaintiff (the applicant here) as he concluded that the suit raised issues which were the same as in a previously instituted suit, being H.C.C.C. NO. 309 of 1986 and that the suit before him was as premature as the previous suit and also that the conditions precedent to filing of the previous suit were also conditions precedent to the filing of suit which was before him and these conditions were not yet fulfilled.

After the notice of appeal was lodged on 30th January, 1997 the applicant applied for copies of proceedings and ruling to enable it to lodge an appeal against the ruling of the learned judge. These were available and collected on 14th October, 1997 and 18th December, 1997 respectively. The intended appeal could have been filed to be in time on 11th day of March 1998 counting the time taken to apply for copies of proceedings and ruling and not counting the period of Christmas vacation (21st December to 13th January)

The reason advanced by the applicant for not lodging the record of appeal is that German authorities (not the applicant) had recommended a settlement with the debtor out of court and that the recommended mediator had requested a suspension of court proceedings during mediation.

There is no evidence before me, whatsoever, of any attempt or attempts to call upon the respondent to settle or agree to mediation. Nor do I have the name of the alleged mediator save a statement from the bar to the effect that Mr. Machira was told about the attempted mediation. Mr. Lepelly stated that the mediation would have been first in time and then either arbitration or suit. The respondent had been successful in having had the applicant's first suit struck out. It had been successful in having the winding up proceedings filed by the applicant struck out. It had also been successful in having the second suit filed by the applicant struck out. I do not see how during the later part of the year 1997 the respondent would want to submit itself to mediation or arbitration. A party which has had three successes in over 10 years on the same or similar litigation would just sit tight.

The litigation between the parties is in respect of contract made between them on 27th June, 1980 as set out by Shields, J in his ruling in H.C.C.C. No. 309 of 1986. It is now over 18 years since then. It is a fundamental principle of any system of law that litigation ought to come to end. I do not have to set out any authority to support this view. It is universal.

This applicant is based in Germany and it relies on what some German authorities (I am not told which body) tell it to do although it acts through counsel in this country. In my view it is not enough to say that some unnamed German authority recommended settlement through mediation and that therefore the record of appeal was not lodged. Nor is it enough to say merely that "the attempted mediation has now broken down". Nor is it enough to say that the decree was not issued until 23rd April, 1998 without setting out what caused the difficulties, if any, in having the decree drawn up and certified.

The application for extension of time was lodged on 16th June, 1998 and I have nothing before me to show when the alleged mediation attempt flopped. All told the application before me is sketchy and half-heartedly made and I am not impressed enough to grant the extension of time sought. Even if there was any genuine attempt (not shown) to negotiate a settlement through mediation, the applicant cannot assume that the attempt would be fruitful and hence the applicant cannot just sit on its laurels hoping to get extension of time after such attempt fails.

In all the circumstances of the application before me, I am not satisfied that I ought to exercise my discretion to grant the orders prayed for. The application is dismissed with costs.

Dated and delivered at Nairobi this 16th day of October, 1998

**A. B. SHAH**

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**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR.