

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

Civil Appli 23 of 1998

VIHIGA MILLERS & HIGHER LTDAPPELLANT

AND

NIFREDA MUDOLA.....RESPONDENT

**(Application for extension of time to file and serve Record of Appeal from the judgment
of the High Court at Nairobi Mr. Justice Mbogholi Msagha dated 14th May, 1992**

in

H.C.C.C. NO. 634 OF 1987)

RULING

When this application came up for hearing before me, Mr. Amolo for the applicant sought an adjournment of the hearing thereof pending the hearing and determination of his application for restoration to hearing of the application filed by the respondent. The application filed by the respondent was for striking out of the notice of appeal lodged by the present applicant on 28th May, 1992. That application was filed in court on 11th April, 1994 and was numbered as Civil application No. NAI.107 of 1994. The court allowed that application and struck and the said notice of appeal. At the time Civil Application No. NAI. 107 of 1994, came up for hearing there was no appearance for the present applicant (respondent there). Mr. Amolo says he is seeking restoration thereof pursuant to provision in rule 55(3) of the Rules of this court.

The application for adjournment was prompted by my pointing out to Mr. Amolo that without there being an application (before me in this application) for extension of time to lodge a fresh notice of appeal, the application would be an exercise in futility as there could not be granted extension of time to lodge a record of appeal, unless there was a proper notice of appeal or unless time was also sought for lodging notice of appeal.

Mr. Kiage for the respondent opposed the application for adjournment and sought striking out of the present application on the ground that the same is premature and hence incompetent.

Mr. Amolo's application for restoration to hearing of Civil Application No. NAI. 107 of 1994 is fixed for hearing, I was told, on 11th October, 1998.

I see no harm in adjourning this application at this stage as, if Mr. Amolo succeeds on 11th October, 1998 in having restored that application to hearing and if he thereafter succeeds on merits, this application would stand to be heard. If he does not succeed, this application would stand spent and liable to be struck out.

In the circumstances I stand over the hearing of this application sine die with liberty to the applicant to fix a fresh date if circumstances so warrant.

Costs of this application are hereby reserved.

Dated and delivered at Nairobi this 5th day of October, 1998.

A. B. SHAH

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JUDGE OF APPEAL.