



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT NAIROBI

Coram: Omolo, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI. 316 OF 1996

BETWEEN

1. WANDUS EMPORIUM
2. NEW UO RWATHIA BAR & RESTAURANT
3. HARAKA PROVISION STORE.....APPLICANTS

AND

1. NGUGI GITONGA
2. WARGEN SERVICE STATION LIMITED.....RESPONDENTS

(Application for extension of time to file Record of  
Appeal in the intended appeal from a Ruling of the High  
Court of Kenya at Nairobi (Juma, J.) dated 23rd February,  
1996

in

H.C.C.C. NO. 781 OF 1995)

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**RULING OF THE COURT:**

The applicant before me is Wandu's Emporium, though two other parties are also named as applicants. Wandu's Emporium sought a mandatory injunction against the two respondents Ngugi Gitonga and Wargen Service Station Ltd. The purpose of the said injunction was for the reinstatement of the applicant in certain premises from which it had apparently been evicted. Juma, J. rejected the application on the 23rd February, 1996. The applicant was dissatisfied with the Judge's decision and on the 4th March, 1996, the applicant lodged a notice of appeal. By a letter dated 3rd April, 1996, the applicant asked the High Court for its proceedings and ruling to enable the applicant lodge an appeal. That letter was not copied to the respondent's advocates; nor was it copied to respondents themselves. That being so the rules of this Court do not allow the applicant to rely on that letter to assist it in explaining its delay

Mr. Macharia for the applicant informs me that they obtained the proceedings on the 26th April, 1996; they, however, have not obtained a certificate of delay from the High Court to vouch-safe for that contention. This application for extension of time within which to appeal was not filed until the 22/10/96. One Mwangi Mbuthia, the advocate for the applicant, has sworn a supporting affidavit and he explains the delay by saying that they were looking for some criminal proceedings which they thought were necessary to enable them lodge a successful appeal. I asked Mr. Macharia if those criminal proceedings were part of the record of the High Court; he told me they were not. For the life in me, I do not see how those criminal proceedings which admittedly were not before Juma, J. could be included in the record of appeal without the applicant having obtained the prior leave of the court to adduce further our additional evidence under Rule 29 of the Court's rules. Be that as it may, the letter asking for those proceedings was only written on the 17th July, 1996; it was copied to the Registrar of the High Court and to the Chief Justice; as Mr Kanyi for the respondent's pertinently pointed out the applicant's advisors saw no reason to

copy that letter to the respondents. Again no certificate of delay has been placed before me to show when the criminal proceedings were supplied to the applicant.

In my view this application is bereft of so many of this court's requirements that it would not be right to allow it. The delay resulting in the failure to file the appeal within the prescribed period has not been satisfactorily explained and that being my thinking on the matter I refuse to exercise my discretion under Rule 4 and order that the application be and is hereby dismissed with costs to the respondents, the said costs to be paid on by Wandus Emporium. Those shall be my orders in the application.

Dated and delivered at Nairobi this 14th day of January, 1997.

R.S.C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR