

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAKURU
(CORAM: LAKHA J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI 104 OF 1996

CHEPTOO KIMUGE.....APPLICANT

AND

RICHARD NYAMBOI.....RESPONDENT

R U L I N G

I have before me an application dated April 24, 1995 but filed on May 30, 1990 under rule 4 of the Rules of this Court seeking an extension of time to file and serve a record of appeal in an intended appeal from the order of the superior court (Tunoi, J, as he then was) delivered on August 2, 1990.

An appeal that had been filed against the said decision was, on January 16, 1991 struck out by this Court as the appeal was incompetent as the decree was not certified. It has taken the applicant more than four years to take corrective measures for a fresh appeal to be filed.

I find the delay inordinate. It was sought to explain or account for such a long delay by relying on the arrest of the applicant's advocate who was detained in prison when he was charged with the offence of treason pending his trial until withdrawal of the charge in January, 1993. Surely, the advocate was not the only one in the Republic who could have attended to this matter. There is no explanation or any account in the supporting affidavit of what steps, if any, the applicant took to make his application. In fact one Mr Kimatta, advocate, did correspond on behalf of the applicant as to the venue of the hearing of the appeal.

It is of interest to note (as I do) that Mr Kimatta's Post Office Box Number and physical address of his office is the same as that of the advocate detained. Nor has it been shown to my satisfaction why no arrangements were made by the applicant for his representation by a suitable or another advocate. The appeal, however, was dismissed not for non-appearance but it was incompetent. It is almost six and a half years since the decision of the superior court against which it is sought to appeal. The delay, long and inordinate, has not been satisfactorily explained or accounted for. It is one of the first principles of administration of justice that all litigation must come to an end. In a more leasured age perhaps we may have been able to show greater indulgence towards indifferent or negligent conduct of litigation.

I may add that this application came before the Honourable the Chief Justice for hearing at Nakuru on September 24, 1996 when an application was made to amend the notice of motion by seeking an extension for the filing and service of a notice of appeal. He adjourned the application to the present sessions ordering that the amendment must be done in a proper form and served on the advocate for the respondent. This has not been done.

This failure notwithstanding, for the reasons above stated I am not disposed to exercise my discretion to grant the extension sought. The application is dismissed with costs.

Dated and delivered at Nakuru this 21st day of February, 1997.

A.A. LAKHA

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JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR