

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

(CORAM: LAKHA, J.A. (IN CHAMBERS))

(CIVIL APPLICATION NO. NAI.175 OF 1996)

BETWEEN

GEOFFREY CHEGE NUTHU.....APPLICANT

AND

AVERALLI & BROTHERS.....RESPONDENTS

**(Application for extension of time to file an appeal out of
time in an intended appeal from a judgment of the High
Court of Kenya at Nakuru (D.M. Rimita) dated 13th
September, 1994**

in

H.C.C.C. NO. 101 OF 1990)

R U L I N G

This is an application under rule 4 of the Rules of this Court for an extension of time to file a notice of appeal and a record of appeal consequent upon the original appeal having been struck out as incompetent. The appeal was struck out on February 28, 1996 and the present application was made on March 29, 1996. I do not consider that this delay was long or inordinate. It seems to me that there was a mistake or oversight in failing to include the exhibits in the original record of appeal. Mr Mugaka for the respondent opposed the application. He sought to argue that on the merits the claim could not succeed and that the plaint is bad in law. The matters go to the merits of the applicant as I am not at this stage, required to consider those. I am also not persuaded that the omission was deliberate there being no material before me to justify such a conclusion.

Having regard to all the circumstances of the case I am satisfied that this is a fit and proper case for the exercise of my unfiltered discretion under rule 4 of the Rules of this Court.

Accordingly the application is allowed. Notice of appeal shall be filed within 7 days and the record of appeal shall be filed within 30 days thereafter. The applicant shall pay to the respondent the costs of this application.

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