



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
(CORAM: BOSIRE, AG J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI 410 OF 1996

BETWEEN

NJENGA NJOROGE APPLICANT

AND

JOSEPH NGANGA RESPONDENT

**(In the matter of an intended appeal from the judgment of
the High Court of Kenya at Nakuru (Lady Justice
Ondeyo) dated 26th March, 1996**

in

H.C.C.C. NO. 731 OF

R U L I N G

The applicant was the unsuccessful party before the superior court in its civil suit, Nakuru High Court Civil Case No. 731 of 1993. The decision in that case was delivered on 26th March, 1996, by Lady Justice S.C. Ondeyo. The applicant was dissatisfied and wished to appeal against that decision.

However, his advocate, Lawrence Mwangi, did not file a notice of appeal within the time prescribed by rule 74(2) of the Rules of this court. The applicant now moves this court for orders, firstly, extending the time within which to lodge a notice of appeal and, secondly, for stay of execution of the decree in the suit, above, pending appeal.

The court's jurisdiction to grant a stay of execution is donated by rule 5(2)(b) of the Rules of the Court. That jurisdiction is exercisable when an intending appellant has lodged a valid Notice of Appeal in terms of rule 74, above. There is no valid Notice of Appeal filed in terms.

Consequently this court lacks the jurisdiction to grant that prayer, which is accordingly struck out.

As for the first prayer, the jurisdiction of the Court to extend time within which to file a Notice of Appeal stems from rule 4 of the Court of Appeal Rules. The jurisdiction is judicial and wide. An applicant is required to show sufficient cause for his failure to take the essential step before the court can exercise that jurisdiction in his favour.

The applicant's case is that his erstwhile advocate, Lawrence Mwangi, failed to file a Notice of Appeal in time because he was still waiting to be supplied with copies of proceedings and ruling of the

superior court, which according to him, were only supplied long after the period for lodging a Notice of Appeal had expired.

The evidence before me clearly shows that copies of proceedings and ruling were applied for on 1st April, 1996. However, such documents are not essential in lodging a Notice of Appeal. A notice of Appeal is only a formal document declaring that a party intends to appeal against either a decree or order of the superior court. An intending appellant is not obliged to lodge it with any other documents.

Consequently, the reason given by the applicant to explain his failure to lodge a Notice of Appeal on time is untenable. The authorities cited by Mr. Kiplenge for the applicant have no relevance to this matter because there is no averment that Mr. Lawrence Mwangi was mistaken as to the requirements for the lodging of a Notice of Appeal. What appears to be the case as was rightly pointed out by Mrs. Wamithi for the respondent, is that Mr. Mwangi was negligent.

The applicant also depones in his affidavit in support of his application that the dispute between him and the respondent concerns land, and that he has good grounds for challenging both the superior court's decision and the arbitration award on which it was based. That may well be so.

However, the applicant having not placed material before me to enable me exercise my judicial discretion in his favour, I have no basis for doing so. His application, therefore, fails and is ordered dismissed with costs.

Dated and delivered at Nakuru this 20th day of February, 1997.

S.E.O. BOSIRE

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AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR