



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

CORAM: KWACH & SHAH, J.J.A. & BOSIRE, AG. J.A.

CIVIL APPLICATION NO. NAI 21 OF 1995

WILLIAM MASAKWE APPLICANT

AND

BEN SIRENGO RESPONDENT

**(Application for leave to file notice of appeal in an intended
appeal from a ruling and order of the High Court of Kenya
at Kakamega (Tanui J) dated 8th March, 1994**

in

H.C.C.C. NO. 361 OF 1990)

RULING OF THE COURT

This is a reference to full court against the ruling of the learned single judge of this Court (Lakha, JA). The learned single judge dismissed the application for leave to file notice of appeal and record of appeal out of time. The dismissal arose as a result of there being no sufficient facts before the learned single judge to enable him to exercise his undoubted discretion to so extend the time. The learned single judge was not impressed with the inconsistency shown by the then counsel for the present applicant (referee) on the issue of date of service of the notice of appeal filed on 9th March, 1994.

Nor was the learned single judge impressed with the explanation given for the two year delay in the filing of the application itself. The applicant (referee) has tried to introduce additional evidence before us under Rule 54 (2) of the rules of this Court when the sub-rule expressly says that no additional evidence shall be adduced at a full court hearing like the one now before us. On the material before him, the learned single judge arrived at a correct decision and we see no reason to think otherwise. This reference is dismissed with no order as to costs.

Dated and delivered at Kisumu this 13th day of March, 1997.

R. O. KWACH

JUDGE OF APPEAL

A. B. SHAH

JUDGE OF APPEAL

S. E. O. BOSIRE

AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR