



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: AKIWUMI, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI. 388 OF 1996**

**BETWEEN**

**CORPORATE INSURANCE COMPANY LIMITED.....APPLICANT**

**AND**

**NYALI BEACH HOTEL LIMITED.....RESPONDENT**

**Application for extension of time to file Notice of  
Appeal and memorandum of appeal in an intended  
appeal from judgment, decree of the High Court of  
Kenya at Nairobi (Mr. Justice Githinji) dated 6th  
April, 1993**

**in**

**H.C.C.C. NO. 5123 OF 1990**

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**R U L I N G**

The present application is for the extension of time within which to file a Notice of Appeal and the related record of appeal by the applicant whose earlier appeal had been struck out by this court on the ground that the record of appeal did not contain as mandatorily required by our rules, a certified copy of the decree involved. It is agreed by all that the ensuing new notice of appeal was lodged on 3rd December, 1996 but not served as required by rule 76 within 7 days of its lodging. Indeed according to the replying affidavit of the respondent, it has not been served on them at all. But assuming that it can be said as submitted by Mr. Kimani for the applicant that because the respondent must be deemed to have been served with the notice of appeal by dint of the respondent having been served with a new record of appeal which was made part of the present proceedings before me, and which contains a copy of the notice of appeal and obviously served on the respondent after it had been filed on 13th December, 1996, some 10 days after the lodging of the notice of appeal, that this complied with 76? I would say so.

But the present application is really for the extension of time within which to file the notice of appeal and record of appeal and the delay that is relevant to this is not what happened prior to the striking out of the first intended appeal but what happened subsequently. This delay is about 2 months which I do not think is inordinate. I also take into account that the decretal sum is in a joint interest bearing account in the names of the representatives of both parties.

I will grant the application and order that the notice of appeal be filed within 7 days and the record of appeal already filed be deemed to have been filed within 14 days after the lodging of the notice of appeal. The respondent however, will have its costs for today.

**Dated and delivered at Nairobi this 18th day of April, 1997.**

**A.M. AKIWUMI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**