

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI. 8 OF 1997

BETWEEN

PETER KIMANI NGUBU APPLICANT

AND

SALOME GATHONI CHEGE RESPONDENT

**(Application for extension of time to file Notice of
Appeal and Record of Appeal out of time in an
intended appeal from a judgment of the High Court of
Kenya at Nairobi (Mr. Justice Kuloba) dated 20th
February, 1996**

in

H.C.C.C. NO. 2071 OF 1977)

RULING

By a Notice of Motion under rule 4 of the Rules of this Court the applicant has moved the court for an order extending and enlarging time within which to file a Notice of Appeal and, thereafter, to lodge a record of appeal in an intended appeal against the judgment of the superior court at Nairobi (Kuloba, J.) in its Civil Case No. 2071 of 1977 delivered on February 2, 1996. The applicant has been guilty of many lapses and omissions in the prosecution of his intended appeal. Firstly, a similar application, as this one, was lodged in a wrong court and despite it being disposed of on November 25, 1996, nothing was done to rectify the omission until almost two months afterwards. Secondly, though the proceedings were received on April 16, 1996, the applicant has not given any convincing reasons why he did not instruct his advocate to lodge the intended appeal until about three months later.

This is not a mistake of the advocate but that of the applicant himself. Thirdly, despite the letter to the Deputy Registrar applying for proceedings and judgment having been written on February 20, 1996, it was not despatched to court until March 6, 1996. Finally, a litigant does not require proceedings and judgment in order to lodge a Notice of Appeal, a simple document, normally lodged by intending appellants as a matter of course. Taking into account all the facts, rival submissions by the counsel for the parties and circumstances of the matter, I am not persuaded that this is a proper case for me to exercise my discretion in favour of the applicant. I do not think that he is deserving of the relief sought by him. The application fails and I accordingly dismiss it with costs.

Dated and delivered at Nairobi this 28th April, 1997.

P. K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR