

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: BOSIRE AG. JA. IN CHAMBERS)

CIVIL APPLICATION NO.NAI.104 OF 1997 (UR. 46/97)

THE OFFICIAL RECEIVER & INTERIM LIQUIDATOR

CONTINENTAL CREDIT FINANCE

LIMITED.....APPLICANT

AND

DETO INVESTMENT COMPANY LIMITED.....RESPONDENT

(Application for extension of time to file and serve Notice of Appeal out of time in an intended appeal from a Judgment of the High Court of Kenya at Nairobi (Mr. Justice Mwera) dated 2nd October, 1996
in
H.C.C.C. NO. 100 OF 1994)

RULING

This is an application under rule 4 of the Rules of this court for an order extending time within which to file and serve a Notice of Appeal and thereafter to file and serve a record of appeal. There is an alternative prayer that this court deems that a Notice of Appeal which is dated 16th October, 1996, and filed in court to the superior court on 23rd October, 1996, was properly filed.

Judgment intended to be appealed against was delivered on 2nd October, 1996. By reason of rule 74 of the Rules of this court, an aggrieved party who wished to appeal against the decision was required to file a Notice of Appeal within 14 days from the date of the judgment. In this matter the applicant's notice of appeal though dated 16th October, 1996 was not filed in court until 23rd October, 1996. It was therefore filed out of time without an appropriate order extending the time within which to file it. For that reason I am unable to deem it as properly filed.

There is an earlier notice which is dated 7th October, 1996 but was lodged in the Superior court on the day following. The notice having been timeous it is not clear why a second notice had to be drawn, filed and served subsequently. The second Notice of Appeal may have been filed on the mistaken belief that none had been filed before. The applicant was obliged to but did not explain the circumstances which led him to act the way he did. That notwithstanding under rule 4, above, the court has unfettered discretion to grant orders if the circumstances so dictate.

I have considered this matter and rule that the Notice of Appeal lodged in court on 8th October, 1996, was validly and properly filed. In exercise of my judicial discretion I will only extend the time necessary for filing and serving a record of appeal, which I reckon expired sometime back, by a further 30 days from the date hereof. I will however, make no order as to costs.

Dated and delivered at Nairobi this 20th day of May 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