



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NYERI**  
**(CORAM: SHAH, J.A. (IN CHAMBERS))**  
**CIVIL APPLICATION NO. NAI. 348 OF 1996**

**BETWEEN**

**JOHN WACHIRA KAROCHA ..... APPLICANT**

**AND**

**JOYCE MURINGO KINYUA ..... RESPONDENT**

**(An application for leave to file Notice of Appeal in an  
intended Appeal from an Order of the High Court of Kenya  
at Nyeri (Justice Osiemo) dated 14th March, 1996  
in**

**H.C.C.C. NO. 161 OF 1990)**

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**R U L I N G**

The applicant seeks the exercise of my discretion to file his notice of appeal and record of appeal out of time. At the material time the applicant was acting in person and I am told that he was not aware that he did not need the Court file to file a notice of appeal, against the judgment and decree of the superior court dated 14th March, 1996. But the matter is not as simple as that. The proceedings before the superior court show that the matters in dispute were referred to arbitration by consent of the parties on 10th December, 1991.

The award was read out on 2nd March, 1993 when Tunoi J. (as he then was) informed the present applicant to file his objection, if any, to the award, within 30 days. That was in compliance with Order 45 rule 16 of the Civil Procedure Rules.

On 8th November, 1993 judgment was entered in terms of the award, pursuant to provision in order 45 rule 17 of the Civil Procedure Rules. Thereafter the applicant took no steps whatsoever until 19th March, 1996 when he sought review of the decree made on 8th November, 1993. That application was dismissed. It is thereafter that the applicant attempted to, allegedly, file a notice of appeal, when, so he says, the superior court file was missing most of the time.

There is an ordinate delay, unexplained, of nearly three years, on the part of the applicant. The delay

is mere inaction. I am told the applicant did not consent to a judgment being entered in terms of the award. But the record of the Superior Court shows that he did.

Be that as it may, there is no right of appeal available to the applicant and any extension of time to file notice of appeal and record of appeal would be an exercise in futility; Order 45 rule 17(2) reads:-

***"Upon the judgment so entered a decree shall follow and***

***no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award."***

This application, unfortunately for the applicant, is a non-starter. Firstly there is inordinate delay in taking any material steps after 8th November, 1993. Secondly, filing of notice of appeal is a simple procedure for which court file is not necessary. Thirdly, there is no appeal available to the applicant. I could have dismissed this application on the third factor, above stated, but I have gone into inordinate delay factor in case the applicant wishes to refer the matter to full court.

The application is dismissed with costs.

Dated and delivered at Nyeri this 13th day of May, 1997.

**A.B. SHAH**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**