



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM: BOSIRE, AG J.A.(IN CHAMBERS))**  
**CIVIL APPLICATION NO. NAI 70 OF 1997**

**BETWEEN**

**MWANDIKWA MAANGI**

**KASWII MUSAVA MAANGI ..... APPLICANTS**

**AND**

**NYAMAI MUSILI ..... RESPONDENT**

**(Being an application for extension of time in an intended appeal from a ruling of the High Court of Kenya at Machakos (Justice Osiemo) dated 4th August 1995**

**in**  
**H.C.C.C. No.156 of 1991)**  
**\*\*\*\*\***

**RULING**

The applicant's appeal is to wit Civil Appeal No.52 of 1996, was struck out on 5th March 1997, for being incompetent having been filed out of time without a prior order extending time. The applicant would like to restart the appellate process and has therefore brought this application under rule 4 of the Rules of this court for extension of time to file a fresh Notice of Appeal. He is perfectly entitled to do so. This application was filed in court on 8th April 1997, more than a month after the applicant's appeal was struck out. The explanation given from the bar is that the delay was due to an oversight. Rule 74(2) of the Rules prescribe a period of 14 days within which an intending appellant may file a Notice of Appeal against a decision of the superior court. The period is regarded as reasonable for a litigant seriously minded to challenge a decision against him. The delay in bringing this application is more than 30 days. The applicant was represented by Counsel at the hearing of his appeal which was struck out. It cannot therefore be said that he was unaware of the fact of the appeal being struck out.

Moreover, Counsel for the applicant is not entitled to rely on his own dilatoriness as a basis for seeking the discretion of this court to extend time. Such acts cannot be said to fall within those mistakes of Counsel which are excusable. In the above circumstances and notwithstanding the fact that the respondent did not appear to oppose the application, I am unable to exercise my discretion in favour of extension of time to lodge a fresh Notice of Appeal. I dismiss the application but with no order as to costs.

Dated and delivered at Nairobi this 27th day of June 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**