



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL  
AT NAIROBI**

**CIVIL APPLICATION NO. NAI. 119 OF 1997 (UR. 51/97)**

**BETWEEN**

**TAHIR SHEIK SAID TRANSPORTERS (K) ..... APPLICANT**

**AND**

**CHARLES MUGABO ..... RESPONDENT**

**Application for extension of time in an Appeal from a  
Judgment of the High Court of Kenya at Eldoret (Lady  
Justice Nambuye) dated 23rd May, 1995**

**in**

**H.C.C.C. NO. R.147 OF 1987)**

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**R U L I N G**

The present application is for extension of time within which to file a notice of appeal and the record of appeal of the intended appeal. The applicant who was the defendant in a suit for damages arising out of a motor accident, was represented at the hearing of the suit by advocates who, had through subrogation, been instructed by the applicant's insurance company, namely, the Kenya National Insurance Company which to the detriment of many of its directs, became defunct sometime ago, to act for the applicant. The applicant avers that once the matter began to be handled by its insurance company, it left things in their hands obviously including the payment of what damages may be awarded, since liability was not denied. It was not till 7th March, 1997 when auctioneers levied execution on its vehicles, that the applicant got to know that judgment awarding damages had been given against it as far back as 23rd May, 1995, which its insurance company had not paid. The applicant first successfully moved to obtain stay of execution in the superior court and then made the present application. The delay involved since the applicant got to know of the judgment and the making of this application is some three months.

This application has been opposed on the grounds that notwithstanding the fact of subrogation whereunder, the insurance company had taken over the defence of the suit brought against the applicant, the applicant still had a duty to keep itself informed of progress in the suit since after all, it had been sued for damages. Further, the insurance company had become defunct long after the judgment to be appealed against had been given and advocates acting on behalf of the insurance company had not thought it desirable to appeal. Finally the three months that it took the applicant upon the levying of execution and the filing of the present application was inordinate.

First of all, I think that to the ordinary person, once the insurance company has taken over the defence of a suit on his behalf, the matter is left in the hands of the insurance company including the payment of damages that may be awarded. That being so, I do not think that it can be said that the applicant had a duty to keep tabs on the insurance company. I would exercise my unfettered discretion in favour of the applicant in respect of the period that elapsed between the delivery of the judgment and the levying of execution. I would also do the same in respect of three months delay the occurred between the levying of execution, the successful application by the applicant for stay of execution in the superior court, and the filing of the present application Not only has the applicant complied with the terms of the conditions for the grant of stay which include the deposit of a substantial part of the decretal amount of damages in a joint account, but I am informed that the record of proceedings are ready.

I will therefore grant to the applicant 7 days from today as extension of time for the filing of its notice of appeal and 30 days thereafter within which to file the record of its intended appeal. Costs will be in the appeal.

Dated and delivered at Nairobi this 5th June, 1997.

A. M. AKIWUMI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.