



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CORAM: OMOLO, J.A. (IN CHAMBERS)**

**CIVIL APPLICATION NO. NAI 389 OF 1996**

**BETWEEN**

**PETER KUNG'U WAWERU.....APPLICANT**

**AND**

**STEPHEN KARANJA WAWERU.....RESPONDENT**

**(Application for leave to file and serve the notice of appeal  
and record of appeal out of time in an intended appeal  
from a judgment and decree of the High Court of Kenya at  
Nairobi (Mwera J) dated 28th November, 1995**

**in**

**H.C.C.A. NO. 18 OF 1994)**

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**R U L I N G**

By his notice of motion lodged in this Court on the 13th December, 1996 and brought under Rule 4 of the Court's Rules, Peter Kung'u Waweru, the applicant herein, asks me to extend for him the time within which he can file and serve his notice of appeal and the record of appeal. The applicant intends to appeal against a judgment of the superior court which had allowed an appeal by the respondent, Stephen Karanja Waweru, from a magistrate's decision. The decision of the superior court against which the applicant proposes to appeal was made on the 28th November, 1995 and as I have said, this application was not filed until the 13th December, 1996, over one year later. The applicant was not represented in the superior court and the only reason he offered for the delay of over one year was that he was ignorant of what steps to take after the superior court had ruled against him. The applicant did take some steps after the judgment but they were all wrong steps. On the 7th February, 1996, he wrote a letter to the Chief Justice expressing his dissatisfaction with the judgment. That letter, however, was written nearly three months after the judgment of 28th November, 1995 and the applicant has not explained what he did during that period.

On the 6th May, 1996, he sent a reminder to the Chief Justice and once again that was nearly three months after the first letter. Eventually he wrote to the office of the Attorney- General on 2nd July, 1996 and thereafter the next time he is heard of is on the 13th December, 1996 when he filed this application. It is true the applicant was unrepresented, but as the respondent who conducted his case before me in person pointed out, the applicant was for some twenty-eight years in the prison service ending with the rank of an inspector. It is incredible that during that period, he would have been wholly ignorant of the requirement that appeals must be lodged within certain periods of time. So that even if his first letter to the Chief Justice were to be treated as an appeal, it was written nearly three months after the judgment and as I have said he has not told me what he was waiting for during that period. I have some sympathy for the applicant but I do not think the discretion granted to the Court under Rule 4 should or ought to be exercised on grounds of sympathy.

Where there has been a long delay as in the present case, some explanation for that delay must be given to

enable the court exercise the discretion. This applicant has not put before me acceptable material upon which I can exercise my discretion in his favour and that being my view of the matter, this application fails and I order that it be dismissed with costs to the respondent.

Dated and delivered at Nairobi this 31st day of July, 1997.

**R. S. C. OMOLO**

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**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR