



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: AKIWUMI, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI 162 OF 1997

BETWEEN

ANTONY MWAU WAMBUA APPLICANT

AND

UNITED FINANCE COMPANY LTD RESPONDENT

(Application for extension of time to file an Appeal out of time in an Appeal
from a Judgment of the High Court of Kenya at Nairobi (Justice Aganyanga)

dated 24th November, 1995

in

H.C.C.C. NO. 4717 OF 1990)

R U L I N G

There are at least two cumulative reasons why this application for extension of time for the applicant to institute his appeal, must fail.

The judgment which the applicant intends to appeal against, was given on 23rd November, 1995 and Notice of Appeal was filed on 28th November, 1995. This according to Rule 81(1) of our Rules means that the applicant had 60 days from this date within which to lodge his appeal. This essential step he did not take. Furthermore, the exemption to this rule, does not apply since the applicant did not send a copy of his written request for a copy of the proceedings in the superior court and addressed to the registrar, to the respondent. But be this as it may, the delay that it took the applicant from 29th November, 1996 when he obtained the copy of the proceedings and judgment as indicated in the Certificate of Delay which itself was strangely shown as being ready for collection on 2nd July, 1997 but issued on 1st July, 1997, up to nearly a year later, that is on 2nd July, 1997 when the application was filed has not been satisfactorily explained. The applicant's affidavit in support of his application is entirely silent on this. The applicant's attempt in this regard in the course of his submissions is most inconveniencing and contrived. The applicant was quick enough to file his notice of appeal, he was also quick enough to apply for proceedings. I find his story that he panicked and did not know what to do after the expiry of 14 days after the delivery of judgment, an afterthought. Nearly a whole year's inactivity in the particular

circumstances of this application does not deserve my sympathy whether the applicant be a lay man or not.

And this is orbiter, the applicant's affidavit in support of the application which as already noted, is dated 27th June, 1997 does not refer to the Certificate of Delay which was issued on 1st July, 1997 and which has cleverly been made to appear as if it were annexed to the affidavit.

He who come to equity must come with clean hands.

In the result the application is dismissed with costs.

Dated and delivered at Nairobi this 23rd day of September, 1997.

A. M. AKIWUMI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.