



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: PALL J.A. (IN CHAMBERS))

CRIMINAL APPLICATION NO. NAI.12 OF 1997

BETWEEN

PETER GATONYE KAGIMBI.....APPLICANT

AND

REPUBLIC.....RESPONDENT

(An application for extension of time to file and serve Notice of Appeal in an intended appeal from a conviction and Judgment of the High court of Kenya at Nairobi (Mr Justice Oguk) dated 17th June, 1996

in

CR. APPEAL NO. 1558 OF 1992)

\*\*\*\*\*

**RULING**

The applicant wishes to appeal to this court which would be a second appeal. Mr Rebeiro says that the appeal is going to be on a point of law involving the expert evidence adduced in the trial court. The applicant duly instructed his advocates m/s Waruhiu & Muite, a well known firm to file the appeal. Under r.58(1) of our Rules any person who desires to appeal to the Court of Appeal shall give notice in writing which shall be lodged in six duplicate with the registrar of the superior court within 14 days of the date of the decision sought to be appealed from and the notice of appeal shall institute the appeal. Instead of instituting the appeal by the mere filing of the notice of appeal the applicant's former advocates applied for copies of the proceedings and had been waiting for the said copies. Under r.60 the record of appeal is to be prepared by the registrar of the superior court and not by the appellant.

Because of this lapse on the part of the applicant's former advocates no notice of appeal has been lodged. I do not see any reason why the applicant should suffer and be deprived of his right of appeal because of the sin of his former advocates.

I accordingly allow the application and extend the period for filing the notice of appeal under r.4 of the Rules. The notice of appeal shall be filed within 7 days.

**Dated and delivered at Nairobi this 1st day of October, 1997.**

**G. S. PALL**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**