



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: GICHERU, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI 382 OF 1996

**CANVAS MANUFACTURERS LTD. .... APPLICANT**

**AND**

**S. R. KARUNDITU ..... RESPONDENT**

**(Application for extension of time to file and serve notice  
and record of appeal in an intended appeal from a  
judgment of the High Court of Kenya at Nairobi (Shah, J.)  
dated 13th June, 1994**

**in**

**WINDING UP CAUSE NO. 24 OF 1990)**

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**R U L I N G**

In this application, the applicant seeks extension of time to lodge and serve the notice and the record of appeal. The applicant's original Civil Appeal No. 188 of 1994 was on 28th November, 1996, struck out by this Court for the reason that the record of that appeal did not contain a certified copy of the decree appealed from. According to counsel for the applicant, he became aware of this fact two days before the date fixed for the hearing of that appeal. His explanation for this lapse was that after ensuring that all the necessary documents in that appeal, including a certified copy of the decree, were arranged in the order they should have appeared in the record of that appeal he had left the mechanical aspect of the preparation of the relevant record of appeal to his court clerks who replaced the certified copy of the decree appealed from with an uncertified copy of the same.

Soon after that appeal was struck out and in the course of preparing the present application, counsel found the certified copy of the decree in question in his original file. To him therefore, the possibility was that one of his court clerks must have substituted the uncertified copy of the decree which had been in that file in place of the certified one probably not knowing the attendant consequences of such substitution. Counsel, however, freely accepts blame for this lapse but contends that the issue for submission in the intended appeal would involve the application of rule 201 of the Companies (Winding Up) Rules and the practice of the Companies courts in this country in respect thereof. The application of the said rule had a direct effect on the decision of the superior court against which the applicant intends to appeal to this Court. It is for this reason that the applicant has sought extension of time to lodge the notice and record of appeal in this application.

Counsel for the respondent, however, opposes this application and submits that the dispute between the parties to it arose in 1990 and the same has been oscillating between this Court and the superior court. It has been hanging over the heads of the litigants for the last 7 years and ex-facie there is no merit in the applicant's intended appeal. According to counsel, litigation in the subject-matter of the intended appeal having gone full circle, the said appeal would only end up being an academic exercise.

From the record of this application, it would seem that after the applicant's Civil Appeal No. 188 of 1994 was struck out on 28th November, 1996, its present application was lodged in this Court on 6th December, 1996. This was within a period of 8 days. The applicant cannot therefore be accused of delay in bringing this application. No doubt the lapse in not including a certified copy of the decree appealed

from is to be blamed on counsel for the applicant who does not run away from it but has explained the events that may have led to the exclusion of that copy of the decree resulting in the applicant's original appeal being struck out when it came up for hearing. That explanation appears plausible to me and whether or not the intended appeal will eventually end up being an academic exercise, may not in the present circumstances be for me to say. In the result and in the exercise of my discretion under rule 4 of the Rules of this Court I grant the applicant's application so that the time for lodging its notice of appeal is extended by 7 days from the date of this ruling and the time for lodging its record of appeal is extended by 15 days from the date of lodging its notice of appeal. The respondent shall have the costs occasioned by this application.

Dated and delivered at Nairobi this 11th day of November, 1997.

**J. E. GICHERU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**