



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLICATION NO. NAI 224 OF 1997

BETWEEN

1. JOSEPH MBUGUA DEDAN GACHUMI

2. JAMES GICHURU DEDAN GACHUMI.....APPLICANTS

AND

GEOFFREY MBUGUA DEDAN.....RESPONDENT

**R U L I N G**

This is an application brought under Rule 4 for the extension of time for the service of Notice of Appeal and the filing of the record of appeal. The reason for non action in these matters has been blamed on the applicant's previous advocate Onyango Otieno who though he filed a notice of appeal within time, had let the applicants down in not collecting the record of proceedings and judgment which he had applied for, from the Registry when he had been informed that they were ready for collection on 21st November, 1996. But by 26th November, 1996 some 5 days later, the applicants had obtained the services of another firm of advocate, Oyatta & Associates who filed a notice of appointment on that latter date. This firm of advocates too did nothing. For though the proceedings and judgment were paid for on 18th February, 1997 and were ready for collection on 6th March, 1997, they were not collected until 18th August, 1997, when the applicants had again instructed a third firm of advocates to act for them. The applicants seem to have been shopping from one firm of advocates to another and the delay exhibited in not filing the appeal within time, as illustrated by the Certificate of Delay which is attached to the affidavit in support of the application, even if it can be relied upon, shows to my mind, that the total delay that has occurred and which to my mind is inordinate within the context of the surrounding circumstances, can be attributed to the applicants. What is more, this inordinate delay has not otherwise been properly accounted for.

As regards the fact that the certificate of delay cannot be relied upon for the purpose of Rule 31(1) and (2) of the Rules of this court because the request letter for it was not copied to the respondent, I would say that, that by itself, if I had not found that there had been inordinate delay on the part of the applicants, would not have prevented me from exercising my unfettered discretion under Rule 4. In the result, the application is dismissed solely on the ground that the delay in taking the necessary steps to institute the appeal by the appellants, is inexcusable and inordinate. The respondent will have his costs for this application.

Dated and delivered at Nairobi this 10th day of December, 1997.

**A. M. AKIWUMI**

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**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR.