



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI.182 OF 1996

BETWEEN

MORRIS AND COMPANY LIMITED APPLICANT

AND

DAMCO AGENCIES LIMITED.....RESPONDENT

(Application for leave to file an appeal out of time in an intended appeal from the ruling of the High Court of Kenya at Nairobi (Justice Mbogholi) dated 5th October, 1987

in

H.C.C.C. NO. 3237 OF 1978)

RULING

This is an application under rule 4 of the Court of appeal Rules for extension of time to file an appeal against the decision of the superior court given way back on 5th October, 1987. An earlier appeal was filed by the applicant on 22nd May, 1992, but this was struck out by this Court as incompetent on 17th April, 1996, as the record of appeal apparently did not contain certified copy of the decree appealed against as required by 85(1)(b) of the Rules of this Court,

In the supporting affidavit of Mrs Rose Ochana, w appear for the applicant, it is deponed that the applicant desires to exercise its right of appeal, but no attempt has been made to explain why it took some 49 days after appeal was struck out before bringing this application. The appeal was struck out on 17th April, 1996, but the application was not filed until 5th June, 1996. That is a delay which calls for an explanation.

There is also one other point which I think I should deal with. The order sought on the motion is one for extension of time to file an appeal. Once an appeal is struck out everything goes including the notice of appeal, and a party wishing to pick up - pieces must of necessity seek an order, not only to extend the time for filing an appeal, but also for filing a notice of Appeal.

There is no application before me to extend the time for filing a notice of appeal. That apart, I am also of the opinion that 1937 is a very long way back and a great deal of water must have by now passed under the bridge,

In the final result, I do not think that this is a case in which I should exercise my discretion in favour of the applicant. Accordingly, the application fails and is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 24th day of September,1996.

R.O. KWACH

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JUDGE OF APPEAL