



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT NAKURU

(CORAM: GICHERU, J.A. (IN CHAMBERS))  
CIVIL APPLICATION NO. NAI 293 OF 1996 (UR. 108/96)

BETWEEN

NATIONAL BANK OF KENYA LIMITED.....APPLICANT

AND

KWANZA HOUSE LIMITED.....RESPONDENT

(Application for extension of time to file and serve  
Notice and Record of appeal out of time in an  
intended appeal from the decree of the High Court of  
Kenya at Nakuru (Mr. Justice Rimita) dated 10th  
June, 1996

in  
HCCC NO. 303 OF 1995

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**RULING**

In this application, the applicant has sought extension of time within which to lodge and serve the Notice of Appeal and the Record of Appeal in an intended appeal from the decree of the High Court of Kenya at Nakuru (Rimita, J.) dated 10th day of June, 1996 in that court's Civil Case Number 303 of 1995. It would appear that the applicant's original appeal number 197 of 1996 was on 24th September, 1996 struck out by this Court for the reason that it was in respect of two separate decisions of the superior court, namely; the decree of that court dated 10th June, 1996 and the ruling of the same court dated 19th July, 1996 both of which had two distinct Notices of Appeal. In that regard, this Court was of the view that that appeal was incompetent and the same had to suffer the inevitable consequence of being struck out. That consequence necessitated the lodging of the present application by way of Notice of Motion on 26th September, 1996. Save for the lapses aforementioned, that appeal had otherwise been lodged within the prescribed time and the anomalous Notices of Appeal had also been lodged within the prescribed time. It is also to be noted that the present application has been lodged in this Court without delay.

The gravamen of the applicant's application is that the subject-matter of its intended appeal is an approximate sum of K.Shs. 83,000,000/- which it stands to suffer should it be blocked from lodging an appeal against the decree of the superior court dated 10th June, 1996. The applicant thinks that it has good grounds of appeal and seeks opportunity to urge them in this Court.

The respondent's principal ground of opposition to this application is that the applicant has not demonstrated that its intended appeal has any merit in view of the unavailability of the record of its original appeal. To this, the applicant's answer is that it can only rely on its proposed memorandum of appeal which is annexed to the supporting affidavit to its application.

No doubt the non-availability of the record of the applicant's original appeal is a handicap in assessing whether or not its intended appeal is frivolous. Nevertheless, a glance at the applicant's proposed memorandum of appeal and the fact that the subject-matter of the applicant's intended appeal is an approximate sum of K.Shs.83,000,000/- leaves no doubt in my mind that what is at stake in the intended appeal is no mean matter. I think that in the circumstances, the parties to the dispute that gave rise to the

decree of the superior court dated 10th June, 1996 should be given an opportunity to ventilate their respective grievances to this Court. In the result, I exercise my discretion under rule 4 of the Rules of this Court in favour of the applicant and grant its application so that the time for lodging its Notice of Appeal is extended by 7 days from today's date and the time for lodging the record of appeal is extended by 30 days from the date of lodging the Notice of Appeal. The costs occasioned by this application are awarded to the respondent in any event.

Dated and delivered at Nairobi this 11th day of October, 1996.

J.E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR