



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GICHERU, AKIWUMI & LAKHA, JJ.A.)

CIVIL APPLICATION NO. NAI. 188 OF 1996 (70/96UR)

BETWEEN

NELSON WAHOME KIRIUNGI.....APPLICANT

AND

NYAWIRA NDIUNI.....RESPONDENT

(Application for leave to file notice of appeal and an appeal out of time in an appeal from the rulings and findings at the High Court of Kenya at Nyeri (Justice Tunoi and Lady Justice Ang'awa

in

H.C.C.C. NO. 282 OF 1987)

RULING OF THE COURT

This is a reference under rule 54 (1)(b) of the Rules of this Court by the unsuccessful applicant whose application for extension of time to file a notice of appeal and record of appeal was dismissed by a single judge of this Court (Omolo, J.A.) by his ruling of June 28, 1996. The single judge dismissed the application mainly on two grounds: First, he did not find in the material before him a satisfactory account for the delay between October, 1995 when the appeal was struck out and June 12, 1996 when the Notice of Motion which the single Judge dismissed was made. Nor are we satisfied either with the account of the delay during these seven months. Secondly, the intended appeal, as the notice of appeal shows, was from the decision/ruling of the Honourable Justice Ang'awa dated September 17, 1993 which arose from a notice 1 of motion under order 44 rule(1) of the Civil Procedure Rules which itself was from a review of the orders made on March 11, 1993.

This latter order was made pursuant to another application of review. The applicant had no right to apply for a review to Ang'awa, J. It follows that the applicant has no right to appeal from her refusal to undertake the review.

Having given this matter our most anxious consideration, we do not find that the learned single judge erred in principle or otherwise on any of the two limbs on which he refused to exercise his discretion. We are satisfied that in all the circumstances, he was right. There are no grounds which would warrant an interference with his decision.

For the reasons above stated, this application fails and is dismissed with costs.

Dated and delivered at Nairobi this 8th day of October, 1996.

J.E. GICHERU

.....

JUDGE OF APPEAL

A.M. AKIWUMI

.....

JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

I certify that this is a true

Copy of the original

DEPUTY REGISTRAR