

IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI. 295 OF 1995

BETWEEN

UCHUMI INSURANCE BROKERS LTD..... APPLICANT

AND

KENYA BUREAU OF STANDARDS RESPONDENT

**(Application for extension of time to file record of
appeal out of time in an intended appeal from a
judgment of the High Court of Kenya at Nairobi (Mr.
Justice Mbogholi-Msagha) dated**

in

H.C.C.C. NO. 1644 OF 1987)

RULING

I have before me a motion on notice expressed to be brought under rule 4 of the Court of Appeal Rules by Mr. Kowade, for the applicant, for orders that the time for lodging the record of appeal be extended.

The judgment the subject matter of the intended appeal was delivered on 22nd October, 1987. The applicant being dissatisfied with it immediately filed a notice of appeal - in fact on the same day. Its then advocate was Mr. A. R. Kapila. It would appear from the three letters written by the applicant to Messrs. Muthoga, Gaturu & Co., advocates, that the said advocates were instructed to take necessary steps to lodge an appeal. However, it is now clear that nothing was done and no appeal was ever filed.

Though the notice of appeal was duly filed, there is nothing on record to show what the applicant did from 1987 to 1995 - a period of eight years. Even though the newly instructed advocates were inactive, it would not have been difficult for the applicant to find out within a short time that they were unwilling to act for it in the intended appeal or that they were utterly negligent. All that I can surmise is that the applicant did not care whether an appeal was filed or not. After all, it is the duty of every litigant to keep in constant touch with his advocate.

The delay involved herein is too inordinate to be excused; and, the application itself may be deemed to amount to an abuse of the process of the court. If I were to accede to such an application with an uneventful history, I would be occasioning injustice to the respondent. The applicant has not offered a reasonable explanation for such a long lapse of time.

This application is without merit and I refuse to exercise my discretion in the applicant's favour. The application is dismissed with costs.

Dated and delivered at Nairobi this 4th day of November, 1996.

P. K. TUNOI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR