



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT Mombasa

(Coram: Hancox, JA (In Chambers))

CIVIL APPLICATION NAI 28 OF 1986 (In the matter of an intended appeal)

BETWEEN

ALI MASOUD MWAKILEO APPLICANT

AND

A Y A JIWAJI AND JIWANJI RESPONDENT

(Application for extension of time to serve a notice of appeal out of time in an intended appeal from a ruling of the High Court of Kenya at Mombasa (Aragon, J) dated November 14, 1985)

In

BANKRUPTCY CAUSE NO 3 OF 1985)

RULING

The substantive point in this application to extend time for serving the notice of appeal on the respondent would appear to be almost on all fours with the point decided by Madan, J A (as he then was), in Civil Application Nai 1 of 1981, Cassam & Anor v Sachanja & Anor, and it might be of help to the counsel to consider that decision.

However, to return to this application for the judgment of this application, which is on the grounds of late service and consequently insufficient time to prepare by Mr Adere, on behalf of the applicant, in my opinion he must have known that this court would be in Mombasa now, and his clerk could have enquired if this matter would be listed. The application was, moreover in the published cause list for Monday July 14, in Mombasa.

In the circumstances I grant the adjournment of the application but I consider the applicant should pay the costs of today's abortive hearing to the respondent in any event, and I so order.

As regards the main appeal, Civil Appeal 12 of 1986, this was listed for today before the full bench, but it obviously cannot be heard until the application is disposed of Mr Jiwaji has not strenuously opposed the adjournment of either the application or the main appeal. In the circumstances I order that the main appeal be taken out of the list and be re-listed for the next sessions.

As I cannot now forecast the result of the application, it seems to me that it would be unjust to make any order for costs of the adjournment of the main appeal, and I accordingly reserve these until the main appeal is heard. Orders accordingly.

Dated and delivered at Mombasa this 17th day of July, 1986.

ARW Hancox

Judge of Appeal

I certify that this is true copy of the original.

DEPUTY REGISTRAR