



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Hancox, JJA (In Chambers) CIVIL APPLICATION NO NAI 8 OF 1979

In the matter of an intended appeal

BETWEEN

CARTER & SONS LIMITED.....APPLICANT

AND

HARI SINGH & COMPANY LIMITED.....RESPONDENT

(Application for extension of time to file an intended appeal from an order of the High Court of Kenya at Nairobi

(Kneller, J) dated 20th December, 1978) in BANKRUPTCY & WINDING UP CAUSE NO 19 OF 1978)

CASES REFERRED TO:

- 1. Baichand Shah V Jammadas [1959] EA at p 840 per Sir Owen Corrie**

RULING OF HANCOX, J A

The record of this intended Appeal (which has not yet been lodged, but which Mr Khaminwa kindly supplied and to which he and Mr Jowhal agreed I might refer, though not for the purpose of assessing the merits of the appeal) shows that a petition for the winding up of HARI SINGH & COMPANY LIMITED was filed on 30th November, 1978. Before it was heard, the company applied for an order to restrain the Petitioner from proceeding further and to strike out the petition on the grounds that the Company was not insolvent. This was heard by Kneller J (as he then was) on December 19th, 1978, and allowed by him on the following day.

Notice of Appeal against that decision was filed by the Petitioner on 2nd January 1979, within the period prescribed by Rule 74(2) of the Rules of this Court. On the same day his advocates, Messrs Khaminwa and Khaminwa, applied to the High Court for a certified copy of the proceedings and of the ruling, copying that request, correctly, to the other side. They then brought the present application for an extension of time for instituting the appeal, on the ground that the proceedings were not supplied until 2nd May, 1979.

Thereafter, the matter went to sleep until 6th May, 1981, when the application was fixed for hearing on 30th September 1981, on which date, it was taken out by consent. Three further notices were sent out from the registry in 1983 and the matter was eventually www.kenyalawreports.or.ke

fixed for hearing before me on 18th January, 1984. On two of those occasions neither party appeared to fix the date, and on the third only, Messrs Jowhal attended. Mr Jowhal, on behalf of the Company, and the Respondent to this application, has objected to the granting of an extension of time on three grounds, first that the application does not purport to be under Rule 4, which confers the powers to do so, but under four other rules which have no bearing on it, secondly, that there has been inordinate delay, or laches, in bringing the matter on for hearing, and thirdly, that the supporting affidavit does not contain a statement of the nature of the judgment and the reasons for desiring to appeal against it in accordance with this Court's predecessor's direction in *BHAICHAND SHAH v JMMADAS* [1959] EA at p 840 per SIR OWN CORRIE Ag. J A. Additionally, Mr Jowhal has pointed out that, as the copy of the Notice of Appeal handed in shows, it was not served until 2nd February 1979, well outside the seven days period after lodgment prescribed by Rule 76(1).

In my opinion, the delay in bringing the application on for hearing, has not been the applicant's fault. As was pointed out, unlike the High Court, where the parties attend the registry to take a date, in this Court, the registry notifies them to attend for the purpose, and a reading of the correspondence file shows that the reason the registry did not send out its first notice to attend until 6th May, 1981, was because Messrs Jowhal and Company failed to reply to the Deputy Registrar's letter of 11th May 1979 asking them if they objected to the application for extension of time that had, at that time, just been filed. When they did reply, it was to say that they had tried unsuccessfully to contact senior counsel and would inform the Deputy Registrar if they objected to the application or not. No reply being received to a further reminder, the registry then asked the advocates to attend to fix the first date, which proved abortive.

There has been much authority as to what constitutes "sufficient reason" for granting an extension of time under Rule 4. Having considered them, and having taken account of Mr Jowhal's other points, I take the view that since Messrs Khaminwa & Khaminwa applied for the certified copy simultaneously with filing the Notice of Appeal, and since they filed this application only a week after receiving it, that sufficient reason has been shown for extending the time for instituting the appeal. In any case, the applicant would also have been covered by the proviso to Rule 81, which excludes the time taken for preparation and delivery of the certified copy, provided the Registrar has so certified. Unfortunately, the applicant did not attach any certificate to this application. Had it done so, it would have obviated the necessity of showing sufficient reason under Rule 4. Nevertheless, I am satisfied in the instant case that the applicant has shown sufficient reason to extend the time for instituting the appeal, and I direct that it shall do so by 19th March 1984. I make no order as to costs.

Dated at Nairobi this 3rd day of February, 1984.

A R W HANCOX

JUDGE OF APPEAL