

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Nyarangi, Ag J A (In Chambers))

CIVIL APPLICATION NO NAI 64 OF 1983

BETWEEN

ISAAC CHEPKWONY.....APPLICANT

AND

1.DAVID SAMOEI

2.ELISHA BUSIENEIRESPONDENTS

3.KIPTOO METO

(Application for extension of time to file an intended appeal from a ruling of the High Court of Kenya at Nairobi (Owuor, J) dated 1st November, 1983 In High Court Civil Appeal No 203 of 1978)

RULING

The applicant asks for an order under rule 4 of the Court's rules to extend time in which to lodge a notice of appeal and to provide that costs of, and incidental to this application do abide the result of the intended appeal.

There is an affidavit of the applicant's advocate in support of the application. Mr Kamau for the applicant stated that the ruling of the superior court, which was due for delivery on the 15th day of July 1983, was not in fact given on that date and that on 20th day of November, 1983, he received notice by post that the ruling would be delivered on the 18th November.

Mr Rach for the respondent, replied that, had Mr Kamau asked him (Mr Rach), he would have told him that the date for the ruling was the 18th November.

There is no replying affidavit and I see no reason for doubting Mr Kamau's affidavit. Clearly, Mr Kamau was confused by the several dates which were given at short notice. The notice for the 18th November was received late and Mr Kamau is not to blame. The Court has wide discretion (to be exercised Judiciously) under rule 4 to make orders to extend time. The applicant is entitled to have the orders he wants. Accordingly, the applicant is granted an extension of time. The notice of appeal shall be lodged in the next 14 days and thereafter rule 76 shall be complied with. The costs of and incidental to this application shall abide the result of the intended appeal.

Delivered at Nairobi this 19th day of April, 1984.

J O NYARANGI

AG JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR