



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO NAI 60 OF 1983

BETWEEN

MAITHYA LONZI.....APPLICANT

AND

1.PAUL MUTUKU

2.KYAMA PAUL MUTUKU.....RESPONDENTS

(Application for extension of time to file an intended appeal from a judgment of the High Court of Kenya at Nairobi (Chesoni, J) dated 7th July, 1982 In

High Court Civil Appeal No 16 of 1981) _____

RULING

The applicant invokes rule 4 of the Court's Rules and asks for an order extending the time limited by rule 81 for instituting an appeal after Notice of Appeal has been served. It is further requested that such time be extended by 14 days from the date of hearing of this application or by such other time as the Court deems fit and that the costs of this application be costs in the intended appeal.

There is an affidavit of the Advocate acting for the applicant in support of the application. Mr Kokonya, for the applicant, said the delay was due to the inability to obtain all the proceedings in time, that on 9th November 1983, they were informed that certified copies of the proceedings were ready and that they collected them on the same day. Mr Waki, for the respondent, referred to his replying affidavit and countered that the delay was not caused by the relevant court registry as certified copies were available for collection by 20th May, 1983.

The applicant's advocate collected copies of the proceedings which were certified on 9th November, 1983. The certified copies would have been obtained on 18th May, 1983 when Mr Waki collected his copies.

The applicant did not follow up his application for certified copies. Prudent parties and advocates do that. The applicant did not and his advocate was content to wait for information from the High Court registry. The High Court was duty bound to inform the

applicant that certified copies were ready. There is nothing to suggest that the applicant would not have taken steps to obtain the relevant proceedings during the month of May 1983, if the High Court registry

had informed him. The applicant should, as Mr Waki said, have followed up his letter dated 98th July, 1982. But his failure to do so did not cause the High Court registry to delay in informing the applicant that certified proceedings were ready for collection.

The applicant successfully applied for a stay of execution. That is some indication of intention to prepare to lodge an appeal.

If only to encourage parties and their advocates to follow up letters written to the Court registries the respondent here shall be paid his costs of this application. The Court has wide discretion to be exercised judicially under rule 4, to extend time on such terms as appear just. The application is allowed and the appeal shall be instituted as provided in Rules within the next 14 days. The applicant shall pay the respondents' costs before the appeal is instituted.

The party dissatisfied with the decision which has just been given, may now informally apply for a reference to the full Court or apply in writing within seven days to the Deputy Registrar.

Given 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