

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

(Coram: Chesoni AG J A (In Chambers))

Criminal Application No NA17 OF 1984

(In the matter of an intended appeal)

Between

Answer Kipngetchich Applicant

And

RepublicRespondent

(Application for extension of time to file notice of Appeal in an intended appeal from a conviction of the High Court of Kenya at Nairobi (O’Kubasu J) dated 3rd August 1984 in Civil Appeal No 369 of 1984

RULING OF CHESONIO AG J A

The applicant’s appeal was dismissed by the High Court (O’Kubasu J) on 3rd August 1984. His wife consulted him in September, when he requested her to instruct a lawyer to prefer a second appeal to this court. In her affidavit in support this application for extension of time to file the Notice of Appeal, Susan Wangari Kipng’etich (his wife says that she instructed Mr Kositany advocate, in September 1984. However, she later discovered that Mr Kositany had taken no action to file and prosecute the appeal and on 9th November, 1984 she instructed Odero and Orieyo, Advocates, who filed this application on 9th November, 1984.

Mr Odero has submitted that the applicant should not be made to suffer for the omission of his former advocate. Miss Mbarire for the Respondent chose to leave the matter to my discretion.

I am satisfied that the applicant took necessary steps to prosecute his appeal but he was let down by his former advocate. The delay is not inordinate and the matter involves the liberty of a subject. I would in the circumstances exercise my discretion in the favour of the applicant. Consequently, the application is allowed and the applicant shall file the Notice of Appeal within 14 (fourteen) days from the date of this order. So I order.

Delivered at Nairobi this 10th of December 1984.

Z R Chesoni

Ag Judge of Appeal

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

Deputy Registrar