



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Potter JA (in chambers))

CIVIL APPLICATION NO NAI 5 OF 1979

BETWEEN

MEHRUNNISSA.....APPLICANT

AND

MOHAMED PARVEZRESPONDENT

JUDGMENT

This is an application under rule 4 of the rules of this Court for an extension of time for lodging an appeal against a ruling of the High Court in civil suit 927 of 1977.

The applicant has not been guilty of any delay. The delay that has occurred has been entirely the fault of the Court.

The ruling was delivered on 18th September 1978. On 28th September the applicant's advocate applied by letter to the registrar of the High Court requesting a copy of the proceedings. At intervals three letters of reminder were sent to the registrar. The copy was received from the registrar on 23rd March 1979. This application was lodged in the Registry of the Court of Appeal on 27th March 1979. I heard the application on 28th June. Again, the delay in setting this application down for hearing is in no way the fault of the applicant.

Mr Vohra for the respondent resists the application on the ground that the applicant did not comply with the proviso to rule 81 by obtaining a certificate of delay from the registrar; for if she had done so there would have been an automatic extension of time and this application would have been unnecessary. He submitted that the proviso to rule 81 must be complied with before rule 4 can be brought into play.

I do not agree with this submission. In my view rule 81 is not so worded that in any case of delay the intending appellant is required to obtain a certificate of delay and take advantage of the proviso. If the intending appellant does not do so, he may still apply for an extension of time under rule 4; but he will then have to show "sufficient reason". And he runs the risk of failure.

The applicant has given me no information whatsoever about the ruling against which she wishes to appeal, or about the grounds of appeal. The general rule of practice (laid down in *Bhaichand Bhagwanji Shah v Jamnadas & Co Ltd* [1959] EA 838, 840, is that:

An applicant for an extension of time under rule 9 [now rule 4] should support his application by a sufficient statement of the nature of the judgment and of his reasons for desiring to appeal against

it to enable the Court to determine whether or not a refusal of the application would appear to cause injustice.

However, it was held in *Balwantrai D Bhatt v Tejwant Singh* [1962] EA 497, that while advocates would be well advised to comply with that rule in all cases, failure to comply with that rule will not deprive the Court of its discretion to grant an extension of time where the delay is attributable entirely to the Courts and is in no way the fault of the applicant.

In the exercise of my discretion I order that the time for lodging the appeal in this case be extended by forty days from today.

This application would have been unnecessary if the applicant's advocate had complied with the proviso to rule 81 (1) and with rule 81(2).

Accordingly the costs of this application will be the respondent's in any event.

Order accordingly.

Dated and delivered at Nairobi this 6th day of July 1979.

K.D POTTER

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JUDGE OF APPEAL