



IN THE COURT OF APPEAL
AT NAKURU

(CORAM: BOSIRE, J.A (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 80 OF 2011
BETWEEN

DAVID KARIUKI WAIGANJOAPPLICANT

AND

ROSEBELLA JERONO MUDAVADIRESPONDENT

*(An application for extension of time within which to file appeal arising from the ruling of (Maraga, J.) dated 10th December, 2010
in*

NAKURU H.C.C.C. NO. 11 OF 2006)

R U L I N G

This is a motion under **rule 4** of the Court of Appeal Rules for an extension of time within which to lodge and serve a notice of appeal, and thereafter a record of appeal. The applicant is **David Kariuki Waiganjo**, who, by the order of the High Court (D. Maraga J) made on 2nd December, 2010 in Nakuru High Court Civil Case No. 11 of 2006, was committed to prison to serve a jail term of three months for an alleged act of contempt against that court’s order. He has since served the jail term, but the order committing him to prison also directed that he compensates the respondent. It is the order for compensation which he wants to challenge on appeal. He lodged in the High Court a notice of appeal, but out of time. Hence this motion.

Mr. Ateya for the respondent does not oppose the motion. The reason given for the delay in lodging a notice of appeal is that the applicant was in jail and could not lodge the notice. Being in prison is not by itself a ground for failing to take an essential step in the appellate process in either a criminal or civil matter. However, as the court has unfettered discretion in an application under **rule 4** and considering that the delay in lodging the notice of appeal though long is not inordinate, I am inclined to exercise my discretion in favour of the applicant, and accordingly extend the time within which to lodge and serve the notice and the notice already lodged and served is deemed as served in time. The applicant is granted 30 days from the date hereof within which to file and serve a record of appeal. The costs of the motion dated 24th March, 2011 are awarded to the respondent is any event.

Dated and delivered at Nakuru this 26th day of September, 2011.

S.E.O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR