



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: AGANYANYA, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI. 214 OF 2009 (UR 147/2009)**

**BETWEEN**

**REDCLIFFE HOLDINGS LIMITED .....APPLICANT**

**AND**

**1. MINISTRY FOR LIVESTOCK AND FISHERIES**

**2. THE COMMISSIONER OF LANDS**

**3. THE HON. ATTORNEY GENERAL.....RESPONDENTS**

*(Application for extension of time to file a notice of appeal and record of appeal out of time in the intended appeal from a ruling of the High Court of Kenya at Nairobi (Wendoh, J.) dated 12<sup>th</sup> June, 2009*

in

H.C. Misc. Appl. No. 735 of 2007)

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**RULING**

This application for extension of time to file the notice of appeal and record of appeal within 14 and 60 days respectively was lodged in this court on 16<sup>th</sup> day of July, 2009. It is based on the grounds set out on the face thereof and the supporting affidavit. The main reason for the delay is spelt out in paragraph 6 of the supporting affidavit which states as follows:-

***“6 THAT despite the applicant’s instructions I inadvertently failed to file the said notice of appeal within the prescribed period of time.”***

Paragraph 6 of the supporting affidavit to the application for certificate of urgency also states:

***“7 THT the delay in filing the notice of appeal was occasioned by the mistake of counsel and not the client.”***

In paragraph 8 he states:

***THAT the client should not be made to suffer for the mistakes of its counsel.”***

**Mr. Karumba**, learned counsel for the applicant appeared before me on 5<sup>th</sup> May, 2010 and argued the application on the grounds set out on the face thereof and the averments in the affidavit. It was not opposed as neither the respondents nor counsel appeared.

The ruling of the superior court against which the present application arose was delivered on 12<sup>th</sup> June, 2009, and this application filed in this Court on 16<sup>th</sup> July, 2009 – a delay of a period of about 18 days. Though this application was not opposed as aforesaid, paragraphs 6, 7 and 8 of the supporting affidavit do not give good reasons why the appellant or his counsel, for that matter, failed to file notice of appeal within 14 days as provided by **rule 74(2)** of this Court’s Rules. It is true the length of delay was about 18 days but this alone is not enough for the Court to grant the prayers sought. Counsel was required to give a valid reason for the delay of 18 days or address me on the possibility of the intended appeal succeeding or that it is not frivolous. What he did was to throw the application and draft memorandum of appeal at the Court and to say:-

***“Look at those documents and decide.”***

This is not good enough. Counsel had a duty to address and satisfy me on the relevant ingredients of the application as enunciated in the case of ***Mwangi v Kenya Railways Limited [2003] KLR 486*** and to convince me that he is entitled to the orders sought which he never did.

I am sorry I am not satisfied the applicant is entitled to the prayers sought. I dismiss the application but make no order for costs.

***Dated and delivered this 4<sup>th</sup> day of June, 2010.***

**D. K. S. AGANYANYA**

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**JUDGE OF APPEAL**

*I certify that this is a*

*true copy of the original.*

**PRINCIPAL DEPUTY REGISTRAR**