

REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI

Civil Appli 225 of 2002

JOHN GAKUO MUKUNJI.....APPLICANT

AND

PRISCILLAH NYAMBURA KAMANU.....RESPONDENT

*(Application for extension of time to file Notice of Appeal and Record of Appeal from
the judgment of the High Court of Kenya at Nairobi (Juma, J) dated 15th march, 1999*

In

H.C.C.C. No. 4283 of 1992)

RULING

The judgment against which John Gakuo Mukunji, the applicant herein, wishes to appeal was delivered by Juma, J, as he then was on 15th March, 1999, That is more than ten years ago. I understood from Mr. Ngara, learned Counsel for the applicant, that by that judgment, Priscillah Nyambura Kamanu, the respondent to the motion, was awarded damages in the total sum of K.sh.1,311,100/- as a result of a road traffic accident. Mr. Ngara told me during the hearing of the motion that in the interests of justice, I ought to allow them to re-open the matter and ventilate their grievances against the judgment in this Court. Immediately the judgment was delivered, the applicant filed a notice of appeal and followed it up with a letter to the Registrar requesting for copies of proceedings and judgment. The Registrar in his Certificate of Delay issued on 15th June, 2001, states that the applicant paid for and collected the proceedings and judgment on 5th September, 2000, and that the time required for the preparation and delivery of the said documents was from 13th June 1999 to 5th September, 2000. That is the delay the Court can allow for under the proviso to *Rule 81*; any other delay must be explained. The applicant at first filed Civil Application No. 377 of 2001. That application was withdrawn on 28th May, 2002. The present application was filed on 31st July, 2002 nearly two months after the earlier application had been withdrawn. The earlier application was itself filed long after the proceedings and judgment had been made available to the applicant. There is no kind of explanation as to why the present motion was filed some two months after the earlier one had been withdrawn.

Mr. Ngara told me that once they filed the present motion, it was not for them to have it listed for hearing; that is basically correct but they should also show that they made efforts to have it listed for hearing but that such efforts came to naught.

I am ruling on the application some seven years after its filing. For my part, I am not prepared to re-open a matter which was determined some ten years ago. I refuse to exercise my discretion in favour of the applicant and that being the view I take of the matter, I order that the notice of motion dated 29th July, 2002 and lodged in the Court on 31st July, 2002 be and is hereby dismissed but with no order as to the costs thereof as the respondent's advocates did not appear for the hearing of the motion.

Dated and delivered at Nairobi this 22nd day of May, 2009.

R.S.C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.