



IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLI. NAI NO. 276 OF 2007 (UR. 168/2007)

KARIUKI & GATHECHA RESOURCES LIMITED APPLICANT

AND

WILLS O. NYENDE T/A NYENDE & CO., ADVOCATES RESPONDENT

(Application for extension of time to file and serve record of appeal out of time in an intended appeal from the judgment and decree of the High Court of Kenya at Nairobi (Milimani Commercial Courts) (Okwengu, J.) dated 10th July, 2007

in

H.C.MISC.APPLICATION NO. 343 OF 2007)

RULING

The applicant applies for extension of time within which to file a record of appeal in an intended appeal against the decision of Okwengu, J. given on 10th July, 2007.

It is common ground that the applicant's *Civil Appeal No. 167 of 2007* challenging that said decision was by consent withdrawn on 30th October, 2007 on the ground that the appeal so filed was defective.

The applicant acts in this application through its Managing Director *Mr. Dominic Gathecha* who himself alleges is blind and semi-deaf. He prosecutes this application as a result of the applicant's counsel having ceased to act for it after lodging the motion.

This application was filed on 6th November, 2007, about a week after the applicant's appeal had been withdrawn. Thus, in my view, there was no delay in trying to take steps to mount a valid appeal. Again, it is not in issue that the respondent had been paid the entire decretal sum; and thus, he would not be prejudiced if the application is granted.

The applicant, being more or less, a layman, it is incumbent upon me to consider the interests of justice rather than the procedural errors rampant in the motion. For example, Mr. Nyende, the respondent, has submitted that the Court would be acting in futility if it granted the application since the applicant has not sought leave to file and serve a notice of appeal out of time. True, this averment is meritorious, but, the

intended appeal should be allowed to see the light of the day and the matter in issue be heard on merit for the sake of justic.

In the result, I exercise my discretion in favour of the applicant and grant leave to lodge an appeal out of time. I make the following orders.

1. *The applicant shall file and serve a notice of appeal within seven (7) days hereof.*
2. *The applicant shall file a record of appeal 21 days after the service of the notice of appeal.*
3. *The applicant shall pay to the respondent the costs of this application.*

Dated and delivered at Nairobi this 17th day of October, 2008.

P.K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR