



COURT OF APPEAL AT NAKURU

CIVIL APPLI 225 OF 2007

BARCLAYS BANK OF KENYA APPLICANT

AND

KEPHA NYABERA & 189 OTHERS1ST RESPONDENT

KENYA FARMERS ASSOCIATION LTD2ND RESPONDENT

CO-OPERATIVE BANK OF KENYA LTD3RD RESPONDENT

(An application for extension of time within which to file the memorandum of appeal and the record of appeal from a ruling/order of the High Court of Kenya at Nakuru (Mr. Justice Luka Kimaru) dated 1st December, 2006 in H.C.C.C. NO. 560 OF 1998)

R U L I N G

This application expressed to be brought under **rule 4** of the Rules of this Court seeks, in the main, two orders:

1. That the time to file the memorandum of appeal and the record of appeal be extended;

and

2. That Civil Appeal No. 169 of 2007 be deemed to have been duly filed in time.

The decision the subject matter of the intended appeal was delivered on 1st December, 2006. The applicant being aggrieved by it timeously filed a notice of appeal.

However, the appeal being Civil Appeal No. 169 of 2007 was

lodged on 15th August, 2007, a time which constituted a period which was obviously outside the time permitted by the Rules of this Court.

According to the Certificate of Delay of which Mr. Karanja for the 1st respondent challenges the time taken by the Court to prepare and supply copies of the proceedings and ruling was from 6th December, 2006 to 31st May 2007. It would appear therefore that the delay in filing the appeal was 15 days or so outside the time stipulated by Rules.

Mr. Echessa for the applicant explains the reason for the delay as need to contact his client to seek

further instructions and his misunderstanding or misreading of **rule 81** in that he thought that the sixty day period ran from the date of issuance of the Certificate of Delay. This is what is commonly known as mistake of counsel.

In my view, the applicant has satisfactorily explained the reason for the delay. I think that it is a reasonable explanation and the omission should not be visited upon the innocent applicant. Further, I hold that the delay cannot by any stretch of imagination be said to be inordinate.

The appeal has already been lodged. It should be sustained and be disposed off only on substantial justice. Mathematical slips and technical errors should not be invoked in such matters as these.

I have read the attached Memorandum of Appeal. The grounds therein are weighty and arguable. They are not frivolous. Some of the grounds of appeal touch on important matters relating to banking and commerce and I believe that they should be ventilated by this Court as suggested by the learned Judge, Kimaru J. Thus, I am satisfied that the appeal has some merit as the legal interpretation of the matters in issue, one way or the other, will be of useful precedential value to the parties to the dispute and other litigants generally.

Would the 1st respondents be prejudiced if I grant the extension of time sought? I think not.

All in all, I exercise my discretion in favour of the applicant and grant the orders sought. I grant leave to extend the time of filing the memorandum of appeal and the record of appeal so that Civil Appeal No. 169 of 2007 shall be deemed to have been duly filed in time. Costs of this application shall be in the said appeal.

Dated and delivered at NAKURU this 27th day of September, 2007.

P. K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR