



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT KISUMU**  
**CIVIL APPLICATION 339 OF 2005**

**BROOKE BOND KENYA LIMITED ..... APPLICANT**

**AND**

**JAMES NYABIOSI ..... RESPONDENT**

**(Application for extension of time to file an appeal in the High Court out of time from the judgment of the Principal Magistrate’s Court at Kisii (Mr. Soita, P.M) dated 28<sup>th</sup> April, 2004**

**in**

**Chief Magistrate’s Court Civil Case No. 251 of 1998)**

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**RULING**

This is a strange application in which I am being asked to exercise the discretion of the Court conferred by **rule 4** to extend time so as to enable the applicant to file an appeal, not in this Court, but in the High Court. The High Court itself has the power to extend time to enable parties such as the applicant, file appeals in that court. It is not alleged that the High Court has refused to exercise its power to extend time but even if it had refused to do so, the applicant’s remedy would not be under **rule 4** of the Court’s Rules, but by way of an appeal from the order of the High Court refusing to extend time – assuming of course that there is a right of appeal from such an order or in the absence of a right of appeal, leave to appeal being sought and granted. Decisions such as **FAKIR MOHAMED V. JOSEPH MUGAMBI & OTHERS – Civil Application No. Nai. 332 of 2004** on which Mrs. Otieno, learned counsel for the applicant, purports to rely has got absolutely nothing to do with this type of application. That was an application to extend time for lodging the record of appeal in this Court not in the High Court.

With the greatest respect to Mrs. Otieno, the motion before me does not and cannot lie and I order that it be and is hereby dismissed. I however make no order as to the costs of the motion seeing that the respondent made no answer to the motion and I have not even found it necessary to call upon Miss Obaga to address me.

**Dated and delivered at Kisumu this 30<sup>th</sup> day of March, 2006.**

**R.S.C OMOLO**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**