



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT KISUMU**

**CIVIL APPLICATION 353 OF 2005**

**KENYA TEA DEVELOPMENT AGENCY LTD. .... APPLICANT**

**AND**

**BENSON ONDIMU MASESE T/A B.O MASESE & COMPANY ADVOCATES .....**  
**RESPONDENT**

**(Application for extension of time to validate notice of appeal and to file and serve record of appeal  
out of time in an intended appeal from a judgment and decree of the High Court of Kenya at  
Kisumu (Tanui, J) dated 28<sup>th</sup> October, 2005**

**in**

**H.C.C.C No. 75 of 2004)**

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**R U L I N G**

In substance, the motion before me is not opposed. It is agreed that the applicant was not served with the notice for the delivery of judgment and that satisfactorily explains the delay involved in the matter. The only point in contention appears to be whether the applicant should be condemned to pay the costs of the motion. Since the delay involved in the matter has been satisfactorily explained, I allow the applicant's notice of motion dated and lodged in Court on 16<sup>th</sup> December, 2005 and I make the following orders:

- (1) The notice of appeal dated 6<sup>th</sup> December and lodged in Court on 8<sup>th</sup> December, 2005 be deemed to have been lodged in time and the time for its lodgment is extended to the date when it was so lodged. The same has been duly served on the respondent.**
- (2) The record of appeal must be lodged in Court within twenty one days of the date hereof and shall thereafter be served on the respondent within seven days of the date of its lodgment.**
- (3) The costs of the motion shall be in the intended appeal.**

Those shall be my orders in the motion.

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

**R.S.C OMOLO**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**