



IN THE COURT OF APPEAL OF KENYA
AT NYERI

Civil Appli 347 of 2005

GATUMU RUBICHU APPLICANT

AND

NDAMBIRI WAMBU RUBICHU RESPONDENT

(Application for extension of time to refer a ruling of a single Judge in Court of Appeal Civil Application No. Nai. 88 of 2004 to full Court in an intended appeal from the judgment and decree of the High Court of Kenya at Nyeri (Juma J) dated 12th July, 2001

in

H.C.C.A. NO. 61 OF 1999)

R U L I N G

This is an application by Gatumu Rubichi (hereinafter “Gatumu”) who is represented by learned counsel Miss. Mukuha at today’s hearing. The respondent to the application is Ndambiri Rubichu (hereinafter “Ndambiri”) who is the brother of the applicant in thee current application before me.

The relief sought in the notice of motion dated 29th November, 2005 is as follows:

- 1. The applicant be granted extension of time within which to write to the Registrar for reference from a decision of single judge P. K. Tunoi delivered on 26th day of October, 2005 in Nai Civil Application No. 88 of 2004 (NYR. 6/2004).***
- 2. That the costs of and incidental to the application abide the result of the said appeal”.***

I am satisfied that the time limited by **Rule 54 (1)** of the Court of Appeal Rules (“Rules”), being 7 days, within which an application for a reference from the decision of a single judge may initiate the reference by writing to the Registrar is a time limited by the Rules to which **Rule 4** of the rules applies. I therefore have the jurisdiction to deal with the application before me as a single judge.

I have considered what is the length of the delay between the delivery of the ruling dated 26th October, 2005 of P. K. Tunoi, J.A. and the filing on 2nd December, 2005 of the current application before me. It is a period of 37 days less the 7 days allowed by **Rule 54 (1)**. So the period of delay sought to be excused is 30 days. The reason for that delay put forward in the affidavit of Gatumu in support of the current application is that he mistakenly believed that he had 30 days in which to take the step of writing to the Registrar seeking a reference.

There was no affidavit in reply by or on behalf of Ndambiri who appeared in person before me. In his submission before me Ndambiri stated that the Ruling Tunoi JA. was correct that that he would suffer from further delay. He claimed that this brother Ndambiri was using his money to make him suffer. He pleaded that the current application be dismissed so that his mind could be set at rest.

Miss Mukuha said that mistakes of counsel leading to the application heard by Tunoi JA should not be visited on Gatumu.

I have considered the submissions of the parties, the length of the delay and the reasons for that delay and have come to conclusion in the exercise of my discretion that the application before me should be allowed.

I hereby order that the time for writing to the Registrar to seek a reference from the decision of Tunoi JA. be extended to 7 days from the date of this ruling. The costs of this application shall be in the appeal.

Dated and delivered at Nyeri this 12th day of May, 2006.

W. S. DEVERELL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR