



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OMOLO, J.A (IN CHAMBERS))**

**CIVIL APPLICATION NAI 270 OF 2004 (UR. 135/2004)**

**BETWEEN**

**JOHN KEPKEMBOI KILEL ..... APPELLANT/APPLICANT**

**AND**

**COMMISSIONER OF INSURANCE ..... RESPONDENT**

**(An Application for leave to extend time to file and serve Notice  
of Appeal and Record of Appeal out of time from the  
Ruling/Orders of the High Court at Milimani Commercial  
Court (Mutungi, J) dated 29th April 2004**

**in**

**Cause No. 21 of 2003**

**\*\*\*\*\***

**RULING**

The motion before me is under rule 4 of the Court of Appeal Rules and it asks me for the basic order.

***“THAT, the time within which to lodge and serve a Notice of Appeal and record of Appeal be extended.”***

The applicant is Kepkemboi Kilel and he wishes to appeal against the ruling and orders made by Mutungi, J. on 29th April 2004. Though the ruling was actually read on that day, it appears obvious from the record that the applicant did not come to know of the existence of the ruling until 27th July 2004. On that date an application which had been filed by the applicant seeking orders that the learned Judge should deliver his reserved ruling came up for hearing and it was then that the applicant came to know about the ruling. Mr. Angima, learned counsel for the Commissioner of Insurance, the respondent herein, did not seek to contest the position that the applicant only came to know about the existence of the ruling of 29th April 2004, on the 27th July 2004. So that in reality the only period of delay which the applicant has to account for is the period between 27th July 2004 and 2nd November 2004 when the present motion was filed. What is the explanation given by the applicant for this delay of approximately four months?

It appears from the record that before Mr. Letangule, learned counsel for the applicant, came on record, the applicant was previously represented by the firm of M/s Onesmus Githenji & Co. Advocates. Before those advocates could release the file to the applicant, they demanded that the applicant ought to pay their fees and it appears the applicant was not able to do so until sometime in October 2004. The file was eventually released to the applicant on 12th October 2004. Mr. Angima contended that the applicant did not need the file in order to be able to lodge the present application. That may or may not be so but I think that in the circumstances of the case, it was not unreasonable for the applicant and his legal advisors to think that they required the file. They seem to have genuinely thought that they required the file as is evidenced by the correspondence between the applicant and his previous advocates. I think this explanation is reasonable.

But there is still the delay between 12th October 2004 and 2nd November 2004. Once again it appears the applicant was unable to raise the advocates' fees and had to deposit the log-book of his vehicle with them. Lack of money as such, standing by itself, may not necessarily be a valid explanation for explaining a delay. But taking into account all the circumstances in this case, such as that the applicant and his counsel appear to have had quite a bit of difficulties in the superior court and that the applicant has always wanted to appeal, I think it would be an injustice to deny to the applicant his right to come and ventilate his grievances in this Court. I also note that part of the delay between the time the file was released by the previous advocates and the date of filing of the motion was occasioned by the present advocates who said they needed time to decide on what course of action to take in the matter. As I have said, taking everything into account, it would be unjust to the applicant to deny him the orders he seeks.

Accordingly, I allow the notice of motion dated and lodged in this Court on 2nd November 2004, and I make the following orders: -

1. The applicant shall file and serve his notice of appeal within seven days of the date hereof.
2. The applicant shall file and serve his record of appeal within fourteen (14) days from the date the notice of appeal is lodged in Court.
3. The costs of this motion shall be in the intended appeal.
4. If the applicant fails to comply with conditions (1) and (2) within the stated periods then in the event of any such failure the orders above shall automatically stand vacated and the notice of motion shall then stand dismissed with costs, no further order of the Court being necessary for that purpose.

Those shall be my orders in this motion.

**Dated & delivered at Nairobi this 4th day of March 2005.**

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**