



REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI

CORAM: DEVERELL, J.A. (IN CHAMBERS)

CIVIL APPLICATION NAI 86 OF 2005

BETWEEN

NANYUKI EQUATOR SACCO CO-OPERATIVE SOCIETY LIMITED...APPLICANT

AND

NYERI SACCO SOCIETY.....1ST RESPONDENT

THE CHAIRMAN THE CO-OPERATIVE TRIBUNAL.....2ND RESPONDENT

*(An application for extension of time to file and serve notice
of appeal and record of appeal from ruling and order of the
High Court of Kenya at Nairobi (Mr. Justice Ibrahim) dated*

22nd February, 2005

in

H.C.MISC. APPLN. NO. NAI. 886 OF 2003)

RULING

This is an application under rule 4 of the Court of Appeal Rules (“the Rules”) for:-

- 1. An extension of time for filing an serving a notice of appeal and***
- 2. An extension of time for filing and serving the record of appeal.***

The intended appeal is from the Ruling of the superior court (Mohammed Ibrahim J.) delivered on 22nd February 2005 in High Court Miscellaneous Application No. 886 of 2003. The latter application was for judicial review relating to decisions of the Cooperative Tribunal in Case No.16 of 2003 seeking orders of Prohibition prohibiting the Chairman of the Tribunal from continuing with the hearing of Case No.16 ***Nanyuki Equator Cooperative Society v. Nyeri Farmers Sacco Society*** Ltd and Certiorari quashing all proceedings, ruling and orders of 8th August 2003 in the same Case No. 16.

The issue to be raised in the intended appeal is whether the superior court was right in deciding that **Section 80(4) of the Cooperative Societies Act (Act No.12 of 1997)** did not permit other members of the Tribunal to participate with the Chairman of the Tribunal when hearing and determining interlocutory applications in Cases before the Tribunal. In other words was the Chairman required in law to hear and determine such applications on his own?

The superior court answered this question in the affirmative and ordered that the decision of the Tribunal on an interim injunction application in Case No.16 was made without jurisdiction because other members of the Tribunal had in this case participated in the hearing and determination of the latter application.

In my view this issue does give rise to an appeal which is not frivolous.

The application for extension of time was not opposed by Mr. Bosire learned counsel appearing for the Attorney General, an interested party to the judicial review application. He indicated that it was in the public interest that the issue of interpretation of the Section should be determined by the Court of Appeal.

The length of the delay.

The superior court judgment was delivered on 22nd February 2005.

The Notice of Appeal should have been filed not more than 14 days later, which takes us to 8th March 2005.

The letter bespeaking copies of the proceedings addressed to the Deputy Registrar was dated 17th March 2005, which was within 30 days of the decision (though it erroneously requested certified copies.)

The Notice of Motion seeking the extensions of time was lodged on 7th April 2005, which is 28 days after 8th March 2005. The length of delay is therefore 28 days.

The reason for the delay.

The reason given by learned counsel for the applicant **Mr. G.K.Muriuki** is that it was necessary to get instructions from the Chairman of the Applicant Society as to whether to file a Notice of Appeal. **Miss Wekesa**, learned counsel holding brief for **Mr. Sichangi** for the Respondent stressed that it should not take long to get instructions to file a Notice of Appeal which did not result in heavy repercussions if no appeal was subsequently filed. **Mr. Muriuki** did not suggest that he needed instructions as to factual matters in order to file the Notice but he argued that he could not properly act without instructions as there could be costs implications arising from the filing of the notice if not followed up with the institution of the appeal. In a case such as this where the intended appellant is not a commercial organisation or an individual but is a cooperative society and where, according to **Mr. Muriuki**, the consent, to the appeal, of the Chairman of the Society after consultations with the management committee was required, it may be that waiting for such instructions was a special valid reason for the delay to be taken into account in the exercise of my discretion.

I have also considered whether there would be any particular prejudice to either party if the application is allowed. The effect of the superior court's ruling was to grant orders quashing the Tribunal's decision. The Tribunal's decision granted prayers 1, 2, and 3 of the Notice of Motion dated 8th July 2003, which are summarised in the opening paragraph of the Tribunal's ruling. These rulings were in favour of the Nanyuki Equator Sacco (Nanyuki) and restrained the Nyeri Farmers Sacco (Nyeri) in various ways. Thus the result of the superior court's ruling was to quash the orders favourable to Nanyuki to the benefit of Nyeri.

If the intended appeal succeeds the Tribunal's orders in favour of Nanyuki may be restored.

In these circumstances I do not consider that there is any special prejudice either way, which should affect the exercise of my discretion.

Having carefully considered all of the above matters I have come to the conclusion that, in the exercise of my unfettered discretion, I should allow the application.

Accordingly I hereby order that the time for lodging and serving the Notice of Appeal is extended to Friday 24th June 2005 and the appeal shall be instituted within the time limits set in **rule 81** of the Rules.

The costs of this application shall be in the appeal.

Dated and delivered at Nairobi this 17th day of June, 2005

W. S. DEVERELL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR