



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAKURU**

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

**Civil Application NAI 320 of 2004**

**BETWEEN**

**FRANCIS NJUGUNA NDUNGU ..... APPLICANT**

**AND**

**E. OLWENY T/A OLWENY & ASSOCIATION ..... RESPONDENT**

*(Application for extension of time within which to lodge an appeal from a decision of the High Court of Kenya at Nakuru (Justice Kimaru) dated 23rd July, 2004 in*

**H.C.C.C. NO. 57 OF 2001)**

\*\*\*\*\*

**R U L I N G**

This is an application under Rule 4 of the Rules of this Court for extension of time within which to file and serve a notice of appeal from the decision of the superior court dated 23rd July, 2004 in Civil Appeal No. 57 of 2001.

The applicant intends to appeal against the decision of the superior court delivered on 23rd July, 2004. The application is supported by the affidavit of the applicant. The supporting affidavit shows that the applicant instructed an advocate to file a notice of appeal on 28th July, 2004 – 5 days after the delivery of the judgment but the advocate did not file a notice of appeal until 24th August, 2004 – about a month after the date of the judgment. The notice of appeal should have been filed within 14 days. The notice of appeal was filed about 14 days late. That delay is not substantial. The respondent who appears in person does not oppose the application.

In the circumstances, I allow the application. The Notice of Appeal filed on 24th August, 2004 is deemed as duly filed within time. The notice of appeal to be served within 7 days of this order.

Costs of the application assessed at Shs.2,000/= to the respondent. The costs to be paid within 14 days.

***Dated and delivered at Nakuru this 29th day of September, 2005.***

**E.M. GITHINJI**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**