



IN THE COURT OF APPEAL

AT ELDORET

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

CIVIL APPLICATION NAI 64 OF 2005

BETWEEN

PAUL NYORO NG'ANG'A.....APPLICANT

AND

MARGARET W. NG'ANG'A.....RESPONDENT

(An application for extension of time within which to lodge a notice of appeal and the record of appeal from the ruling of the High Court of Kenya at Eldoret (Nambuye, J) dated 6th August, 2001

in

H.C.SUCC.C. NO. 6 OF 1983)

RULING

The applicant's previous appeal was withdrawn on **17th February, 2005** on the ground that it was incurably defective. The applicant then took another sixteen days before returning to the Court with the present motion. *Mr. Cheruiyot* says on behalf of the respondent that the delay of sixteen days is unexplained and is inordinate. *Mr. Kahiga* tells me that the sixteen days was required to take instructions from the applicant as they were not the advocates who had filed the appeal which was withdrawn. *Mr. Cheruiyot* thinks that is giving evidence from the bar and that such evidence is inadmissible. I very much doubt the correctness of that contention. It is to be remembered that in these matters the Court is normally asked to grant leave on stated grounds and on any other grounds as may be adduced at the hearing of the motion. I have never heard anyone contend that such a prayer is illegal.

The sixteen days do not really constitute what can be called inordinate delay. Some explanation has been offered for that period, namely that the advocates for the applicant were taking instructions, as they were not the ones who had filed the previous appeal. I accept the explanation and hold that the delay of sixteen days is not inordinate in the circumstances of the present motion.

Accordingly, I allow the notice of motion dated **3rd March, 2005** and make the following orders:-

- (1) The time for filing the notice of appeal is extended upto the 2nd March, 2005 when the notice was in fact filed;

(2) The record of appeal is to be filed within seven days of the date hereof and must be served upon the respondent within another seven days from the date it is lodged in Court;

(3) I award to the respondent the costs of this motion which I assess at Shs.5,000/= and which must be paid within twenty one (21) days of the date hereof. If payment is not made within that period, the respondent shall be at liberty to execute.

Those are my orders in the motion.

DATED and DELIVERED at ELDORET this 20th day of September, 2005.

R.S.C. OMOLO

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR