



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: DEVERELL, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI. 264 OF 2004**

**BETWEEN**

**TAMIL ENTERPRISES LTD ..... APPLICANT**

**AND**

**OFFICIAL RECEIVER AND PROVISIONAL**

**LIQUIDATION OF CONTINENTAL CREDIT**

**FINANCE LTD & ANOTHER .....RESPONDENTS**

*(Application for leave to file an appeal out of time in an intended  
appeal from the Ruling of the High Court of Kenya at Milimani  
Commercial Court Nairobi (Ibrahim J) dated 5th November, 2003*

*in*

**H.C.C.C. NO. 1914 OF 1999)**

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**R U L I N G**

This is an application under rule 4 of the Court of Appeal Rules (the Rules) for an extension of time to file an appeal against the Ruling of Mohammed Ibrahim J delivered on 5th November, 2003.

I will first deal with the length of the delay. Rule 81 (1) provides that an appeal shall be instituted by lodging the memorandum of appeal and the record of appeal within sixty days of the date when the notice of appeal was lodged.

The applicant has not produced a copy of the Notice of Appeal as an exhibit to the affidavit in support of the application though it is stated in paragraphs 3 and 4 of that affidavit that the Notice of Appeal was filed on 14th November 2003 within the mandatory 14 days and that the Notice was served on Munnika and Co. Advocates being the advocates an record for the respondent.

The respondent has not challenged the accuracy of these two paragraphs of the supporting affidavit which was sworn by learned counsel Dr. Albert Mumma. According to my calculations the 60 days from the lodging of the Notice of Appeal would expire on 13th January, 2004.

The Certificate of Delay issued on 21st October, 2004 by the Deputy Registrar of the High Court certified that the time taken to prepare and supply certified copies of the Ruling and proceedings was 273 days. Adding these days to 13th January, 2004 we come to 12th October, 2004 as being the last day on which the appeal could have been instituted.

The current application was filed on 29th October 2004, which is seventeen days after 12th October, 2004.

This delay of seventeen days needs to be explained by the applicant. This the applicant attempts to do by relating in paragraphs 7 to 16 of this supporting affidavit the difficulties the applicant had in obtaining the certificate of delay which the applicant wrongly thought needed to be included in the record of appeal whereas it has been frequently stated in this Court that the Certificate of delay is not required to be part of the record of appeal.

However though not required for the record of appeal it does seem to me to be a document, which should be produced in support of the application for extension. The delays in obtaining the certificate are therefore, on the facts of this particular case, an adequate explanation of the reason for most of the delay on filing the application.

There remains a delay of a week from 22nd October, 2004 to 29th October, when the application was filed, as to which there was no explanation.

On the question of the merits of the appeal the applicants did not produce any draft memorandum of appeal. Learned, counsel for the applicant Mr. Otieno could only say that the learned judge exceeded his powers by granting orders, which were not applied for stating this was the main ground. He also claimed that the learned judge failed to consider the correct meaning of section 278 of the Companies Act without any further elaboration.

Having considered all of the above and the very brief submissions by Mr. Asinuli learned counsel for the respondent I have, in the exercise of my discretion, come to the conclusion that this application should be dismissed with costs. It is so ordered.

*Dated and delivered on 20th September, 2005.*

**W. S. DEVERELL**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**