



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NYERI**

**CORAM: OMOLO, TUNOI & O’KUBASU, JJA**

**CIVIL APPLICATION NAI 89 OF 2004 (NYR.8/2004)**

**BETWEEN**

**SAMUEL NDIRANGU .....APPLICANT**

**AND**

**PATRICK WACHIRA NDIRITU.....RESPONDENT**

**(Application for extension of time to file notice and record of appeal from a judgment & decree of the High Court of Kenya at Nyeri (Okwengu, J) in**

**H.C.C.A. NO. 88 OF 2001)**

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

**RULING OF THE COURT**

This is a reference from the ruling of a learned single Judge of this Court delivered on 13th May, 2005, whereby, in exercise of his powers under rule 4 of the Rules of this Court, he declined to grant the applicant, **SAMUEL NDIRANGU**, extension of time within which to lodge the notice of appeal and record of appeal in an intended appeal against the judgment of Okwengu, J delivered at the High Court of Kenya at Nyeri on 26th March, 2004. In refusing to enlarge time the learned single judge said:-

***“I have come to the conclusion after taking into account both the lack of any affidavit from either Mr. Nderi or Mr. Nganga and the contents of the judge’s note, that the applicant’s supporting affidavit was lacking veracity in asserting that neither he, nor his advocates were aware of the delivery of the judgment on 26th March, 2004.”***

and also that :

**“When seeking the discretion of the court to extend time it is incumbent upon the applicant to be frank and truthful in his statement of the facts upon which he relies”.**

The learned single Judge, in effect, rejected the application for extension of time on the ground that, though the period of delay is not inordinate, the reasons for that delay had not been candidly explained by the applicant.

The foregoing constitutes the genesis to this reference. The applicant who argued his own application before the learned single judge has rehashed before us more or less the same facts which he

alleged caused him not to lodge his intended appeal within the time prescribed by the rules.

It is trite that this Court will not disturb the decision of a judge in the exercise of his discretion except where he has misdirected himself in some matter and as a result arrive at a wrong decision or unless it is manifest from the case as a whole that he was clearly wrong in the exercise of his discretion and that as a result, there has been injustice.

With respect, we conclude without hesitation, after taking into consideration all the facts of the matter before us and the rival submissions canvassed before us by the applicant and the respondent's counsel, Mr. Wachira, that the learned single judge's exercise of his discretion cannot be faulted. We cannot discern any misdirection which allegedly resulted in his improper exercise of his discretion.

In the result we think that this reference is without merit and is accordingly ordered dismissed with costs.

***DATED and DELIVERED at NYERI this 28th day of October, 2005.***

**R.S.C. OMOLO**

.....

**JUDGE OF APPEAL**

**P.K. TUNOI**

**I** .....

**JUDGE OF APPEAL**

**E.O. O'KUBASU**

.....

**JUDGE OF APPEAL**

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