



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT KISUMU  
CORAM: GITHINJI J.A (IN CHAMBERS)  
CIVIL APPLICATION NAI 215 OF 2005**

**BETWEEN**

**DR. MANASE ONYIMBI.....APPLICANT**

**AND**

**THE BOARD OF MANAGEMENT OF**

**KENYA MEDICAL RESEARCH INSTITUTE.....1ST RESPONDENT**

**THE DIRECTOR, ALUPE LEPROSY AND**

**SKIN DISEASES RESEARCH CENTRE BUSIA (K).....2ND RESPONDENT**

*(An application for leave to file Notice and Record of Appeal out of time*

*from the Judgment & decree of the High Court of Kenya at Kisumu  
(Tanui, J.) dated 14th November, 2003*

**in**

**HCCC NO 154 OF 2000)**

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**RULING**

The applicant seeks extension of time to file and serve a record of appeal.

The applicant is dissatisfied by the judgment of the superior court dated and delivered on 14/11/2003 dismissing his suit against the respondents. In the suit the applicant had sought a declaration that his dismissal from employment was wrongful, null and void and arrears of salary and terminal benefits. Upon the dismissal of the suit, the applicant's advocates filed a Notice of Appeal lodged in court on 27/11/2005. The applicant's advocates by a letter dated 27/11/2003 and copied to the respondent's advocates applied to the Deputy Registrar for certified, typed copies of proceedings and judgment but paid a deposit for the proceedings on 5/2/2004. The proceedings were not supplied promptly as the court file was misplaced. The applicant complained to the Registrar of the High Court about delay in supplying the proceedings. Through the intervention of the Registrar of the High Court, the proceedings were typed and supplied to the applicant's advocates on 27/1/2005. A certificate of delay was accordingly issued by the Deputy Registrar certifying the period from 27/11/2003 to 27/1/2005 as required for preparation and delivery of the proceedings and a judgment. Thereafter, the applicant's advocates filed Civil Application No. NAI 80 of 2005 for extension of time to file a Notice of Appeal and the Record of Appeal which was subsequently withdrawn on 22/6/2005.

Before the Court can exercise its wide discretionary power in favour of the applicant, the applicant should satisfy the Court that the intended appeal is not frivolous, that there has not been inordinate delay in filing this application, and lastly, that if the application is allowed, the respondent will not suffer undue prejudice.

The certificate of delay exonerates the applicant for the delay up to 27/1/2005. In any case, there is correspondence to show that the Court file was misplaced for some time. By proviso to **Rule 81(1)** the period certified as required for the preparation and delivery of the proceedings and judgment is to be excluded which means that applicant had up to 26/3/2005 to file the appeal. So the only culpable delay is from about 27/3/2005 to 30/6/2005 when this application was filed. The applicant's counsel states that that delay was caused by the mistaken belief that time had run out which led to the filing of an application for extension of time. It is true that such an application was filed but subsequently withdrawn. The applicant has actively pursued the Registry and his advocates to see that the proceedings are not only typed without delay but also that the appeal is filed in time. The delay is not inordinate and is in the circumstances the case excusable.

Both the applicant and his counsel say that the appeal has high chances of succeeding. The draft memorandum of appeal contains four grounds of appeal. It is true as Mr Siganga, learned counsel for the respondent states that the grounds of appeal are very general. I also appreciate that the applicant's counsel did not show the specific issues that the applicant intends to pursue in the appeal. Nevertheless, I recognize that the appeal concerns loss of employment and concomitant benefits and that the memorandum of appeal raises some grounds of law.

The respondent did not file a replying affidavit. It has not been shown that the respondent will suffer any prejudice if the appeal is allowed and I cannot see any.

For those reasons, I allow the application. The record of appeal to be filed and served within **14 days** from the date hereof. I give the costs of this application to the respondent.

**Dated and delivered at Kisumu this 1st day of December 2005**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**