



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: TUNOI, J.A.(IN CHAMBERS)
CIVIL APPLICATION NO. 182 OF 2004**

BETWEEN

WILFRED MORIASI OMBUI.....APPLICANT

AND

NYAKANGI NYAMACHE.....RESPONDENT

**(Being an application to file and serve notice and record of
appeal out of time from the ruling of the High Court of Kenya at
Kisii (Wambilyangah, J) dated 15 th December, 2000
in
H.C.C.C. NO. 84 OF 1996)**

RULING

This is an application under rule 4 of the Court of Appeal Rules for an extension of time within which to lodge an appeal.

Civil Appeal No. 77 of 2001 was struck out by this Court on 28th November, 2003 on a technicality. The application now before me was not lodged until 16th July, 2004 on the ground that the counsel for the applicant, a single practitioner in his busy firm, was in and out of office during all the relevant time to nurse his ailing mother who unfortunately later passed away and had no time to prefer the appeal on time. This is the sole reason given, also, for failure to lodge an application for extension of time within a reasonable period.

The delay involved after the appeal was struck out is about eight months. Has it been explained satisfactorily? Is the explanation for delay reasonable and adequate?

Mr. Bosire for the respondent has shown me other proceedings between the parties, now before me, commenced in the superior court. These are **KISII H.C.C.C. NO. 14 OF 2004 (O.S)** filed on 15th January, 2004 by Mr. Masese. There are also grounds of opposition and various affidavits lodged on the 8th of April, 2004. Why were these proceedings lodged but not the application to perfect the intended appeal?

Though I sympathize with Mr. Masese, I do not think that he was so fully occupied in attending to his late mother to such an extent that he could not have had time to attend to the affairs of the applicant. The explanation given to me as the cause of the delay in not lodging this application peremptorily is

inadequate, unsatisfactory and not reasonable. I reject it.

The delay herein is inordinate. The applicant is guilty of laches. I will not exercise my discretion in his favour. Consequently, I dismiss this application with costs.

DATED and DELIVERED at KISUMU this 25 th day of November,

2004.

P.K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR