



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI. 10 OF 2003 (8/2003 UR)

BETWEEN

SAMEER JETHWAAPPLICANT

AND

1. FRANCESCO DI JETHWA)

2. SACHA FRANCESCA).....RESPONDENTS

(Application for extension of time within which to file

and serve Notice of appeal in an intended appeal

from the judgment of the High Court of Kenya at

Nairobi (Ang'awa, J) dated 28th November, 2002

in

H.C.C.C. No. 681 of 1997)

RULING

In this application filed by way of Notice of Motion on 23rd day of January, 2003 under the provisions of Rule 4 of the Rules of this Court, the applicant, Sameer Jethwa, seeks orders that the time within which to file and serve on the respondents a Notice of appeal and letter applying for a certified copy of the judgment in H.C.C.C No. 681 of 1997, delivered on 28th day of November, 2002 by Ang'awa, J. and typed copies of the proceedings in the same case be extended.

Secondly, that a Notice of appeal filed on 5th December, 2002 and served on the respondents' advocate on 9th December, 2002 and the letter addressed to the Registrar dated 2nd December, 2002 and served on the respondents' advocate on 11th December, 2002 be expunged from the record.

The ground upon which the application is sought is that although the applicant filed a Notice of appeal and served the same as well as requested the Registrar for the typed copies of the proceedings and certified copy of the judgment in his case H.C.C.C. No. 681 of 1997, all within the prescribed time, after

the delivery of the judgment on 28th day November, 2002, all these documents bore the wrong case number. Instead of H.C.C.C No. 681 of 1997, a pupil in the applicant's counsel firm inadvertently wrote H.C.C.C No. 6168 of 1997 with the results that no valid Notice of appeal in terms of Rule 74 or a letter requesting for proceedings and judgment in terms of the proviso to Rule 81(1) had been filed or served.

This is the basis upon which the prayer for extension is made. I am satisfied that what happened was a genuine human mistake and that this application was made without much delay. I will therefore exercise my discretion in favour of the applicant, grant the application and order that the Notice of appeal, and a letter applying for a certified judgment and copies of proceedings in H.C.C.C No. 681 of 1997 be served on the respondent within the same 7 days from today's date, AND that the Notice of appeal served on the respondents' counsel on 9th December, 2002 and the letter addressed to the Deputy Registrar dated 2nd December, 2002 be and are hereby expunged from the record forthwith. The costs of this motion shall be in the intended appeal.

Dated and delivered at Nairobi this 31st day of January, 2003.

E. OWUOR

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR