

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

civil misc appl 362 of 02

TIMOTHY MISSIONI ORWENYO APPLICANT

AND

TRANSPARES LIMITED RESPONDENT

(An application for extension of time to file notice & record of appeal out of time in an intended appeal from the ruling of the High Court of Kenya at Mombasa (Comm Khaminwa) dated 20th February, 2002

in

H.C.C.C. NO. 41 OF 2000 [RD])

R U L I N G

This is an application under rule 4 of the Court of Appeal Rules . The applicant, Timothy Missioni Orwenyo was the defendant in High Court Civil Case No. 41 of 2000. A judgment in default of appearance was entered against him. He unsuccessfully applied to have the said judgment set aside.

In the present application his case is that the ruling in the aforesaid application was to be delivered on notice, but that neither him nor his advocate were served with a notice of the date of the ruling. Consequently by the time he came to know of the ruling the time for filing a notice of appeal had elapsed. He later filed a notice of appeal though out of time and now prays that I exercise my judicial discretion under rule 4 above and enlarge the time to include the date the said notice was filed and served. Mr Abdi for the respondent stated before me that he intended to seek an adjournment but he did not bring the matter up until after counsel for the applicant had concluded his submissions. When I advised him that his request was clearly belated he urged me to determine the application on the basis of the material on record. As the respondent did not put in any replying affidavit, the applicant's case is uncontroverted. I have no basis for holding that what the applicant says in his affidavit in support of the application is untrue. The result I allow the application, extend the time within which to file a notice of appeal to include 11th March, 2002 when the notice of appeal of the same date was lodged with the High Court. The applicant to serve the same within seven days of today's date. The applicant to lodge his record of appeal within 30 days thereafter.

As for costs I consider it in the interests of justice that the applicant pays the respondent's today's costs assessed at KShs.500/= but make no order as to the costs of the motion.

Dated and delivered at Mombasa this 29th day of January, 2003.

S. E. O. BOSIRE

JUDGE OF APPEAL

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