

**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: BOSIRE, J.A (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 295 OF 2002**

BETWEEN

SIMON MBURU NJABUAPPLICANT

AND

VERONICA N. ICHUNGWA IST RESPONDENT

PAUL NJUGE ICHUNGWA 2ND RESPONDENT

**(An application for extension of time to file and serve
record of appeal out of time in an intended appeal
from the judgment of the High Court of Kenya at
Nairobi (Visram J>) dated 14th June, 2001
in
H.C.C.C. NO.4433 OF 1994)**

R U L I N G

This is an application for an extension of time within which to file and serve a record of appeal, expressed to be brought under rule 4 of the Court of Appeal Rules. It is the applicant's case that the delay in lodging a record of appeal arose because he was waiting for copies of proceedings to be certified. Besides, that he lacked the necessary court fees for the same.

Copies of proceedings were applied for in time. They were ready for collection by 19th March, 2002. The letter from the court advising the applicant's counsel that copies of proceedings and judgment were ready for collection was received on 18th April, 2002. However the applicant's counsel did not pay for them until a month later. The applicant says he lacked the necessary court fees for the same. However, even after the necessary payment was made no steps were taken to lodge a record of appeal within a reasonable time or at all. Counsel for the applicant, Mr. Kirugara, submitted that the delay arose because he was waiting for the copies of proceedings to be certified. He however conceded, quite properly, that he did not need certified copies of proceedings for him to lodge a competent appeal. Even assuming that the delay arising from certification of copies of proceedings could be excused, there is no explanation as to why this application was not brought promptly. The applicant received certified copies of proceedings on or about 10th July 2002. And yet this motion was not filed until 18th October, 2002, a delay of over three months, which incidentally has not been explained.

To my mind this is not a proper case for the exercise of the court's unfettered discretion under the aforesaid rule.

In the result I decline to exercise my discretion under the said rule and dismiss the applicant's motion dated 18th October, 2002, with costs, notwithstanding Mr. Kirugara's plea, that the intended appeal concerns land.

Dated and delivered at Nairobi this 22nd day of January, 2003.

S.E.O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR