



**IN THE COURT OF APPEAL**

**AT NAIROBI**  
**(CORAM: LAKHA, J.A. (IN CHAMBERS))**  
**CIVIL APPLICATION NO. NAI. 32 OF 2003**

**BETWEEN**

**SAVINGS & LOAN KENYA LIMITED .....APPLICANT**

**AND**

**JAYANTI & JAGDEEP DEVELOPERS LIMITED ..... 1ST RESPONDENT**

**JAYANTI A. PATEL ..... 2ND RESPONDENT**

**JAGDEEP L. KOTEDIA ..... 3RD RESPONDENT**

**(Application for extension of time to serve the Notice of Appeal in an intended appeal from the Judgment of the High Court of Kenya at Nairobi (Honourable Mr. Justice Kasanga Mulwa) dated 20th day of September, 2002**

**in**

**H.C.C.C. NO. 2159 OF 2000)**

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**R U L I N G**

This is an application by the defendant seeking an extension of time pursuant to rule 4 of the Rules of this Court to serve the notice of appeal in an intended appeal from the judgment of the superior court (Mulwa, J.) given on **26 September, 2002**.

The material facts of this short application can be briefly stated. Following upon the judgment aforesaid, the defendant by a notice of appeal dated 1 October 2002 filed the notice on the same day within the prescribed time and allegedly served the opposite side on 8 October . The endorsement of service, however, shows that service was effected on 17 October . The advocate for the applicant did not read the endorsement when the notice was returned and served, but immediately assumed that it was endorsed for 8 October . No reason has been advanced why the endorsement should bear the date of 17 October. It was also said that when an application was made for stay this point was not taken.

In these circumstances, an application has been filed by the respondents to strike out the notice of appeal for it had been served out of time without leave. Such application was filed on 19 November, 2002 but served upon the applicant on 29 November .

Mr. Gautama, for the applicant, assumes that the notice was properly endorsed for 8 October .

On the other hand, Mr. Kalove for the respondents, submits that failure to take this point earlier does not preclude him from taking it now. I agree. Secondly, he submits that the respondent does not admit of any mistake in the proceedings on the basis that the notice was served within time, namely 8 October .

Finally, it is urged that there has been an inordinate delay of 22 months in making the present application. This delay has not been explained.

I have carefully considered this application and I am not persuaded that the notice of appeal had been served on 8 October in the face of clear endorsement that it was dated on 17 October . It is improbable that the endorsements would be dated 17th if not so served. I find this issue in favour of the respondents on a balance of probabilities. I am also satisfied that a delay of 22 months in making this application was inordinate. No explanation has been advanced or account given for this period. I am unable to exercise my discretion in favour of the applicant in the absence of any explanation.

For the reasons above stated, this application, in my judgment, fails and is dismissed with costs.

**Dated and delivered at Nairobi this 27th day of February, 2003.**

**A.A. LAKHA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**