

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT KISUMU

CORAM: O’KUBASU, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 44 OF 2003 (KSM.25/2003 UR)
BETWEEN

HENRY OGONGO MAGETO APPLICANT

AND

NYAMIOBO OGONGO RESPONDENT

(An application to extend time from a judgment and decree of the High Court of Kenya at Kisii (Mr. Justice Wambilyangah) dated 16th October, 2002

in
H.C.C.C. NO. 320 OF 1998)

R U L I N G

This is an application for extension of time in which to file record of appeal. Mr. Sagwe for the applicant submitted that the main ground of the application was that the advocate’s clerk received client’s money for filing record of appeal but the clerk was attacked by robbers and admitted in hospital. There was delay of 30 days.

In an application of this nature an applicant has to explain the reason for the delay. It has been stated that there was a delay of 30 days which was caused by the fact that the advocate’s clerk who had been paid the money for filing the record of appeal was attacked by robbers and consequently admitted in hospital. In my view the reason given for the delay is sufficient to warrant this court to exercise its unfettered discretion in favour of the applicant.

Hence, the application is allowed and the applicant is now to file the record of appeal within 30 days of this order. The applicant will pay to the respondent Shs.500/- as today’s costs.

Dated and delivered at Kisumu this 28th day of March, 2003.

E. O. O’KUBASU

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JUDGE OF APPEAL
I certify that this is a true Copy of the original.
DEPUTY REGISTRAR