

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

CORAM: O’KUBASU, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 317 OF 2001 (KSM.38/01)

BETWEEN

FLORENCE MANWARI APPLICANT

AND

MARGARET A. ABUOGA RESPONDENT

**(An application for extension of time to file and serve
notice of appeal and record of appeal out of time from
the judgment and decree of the High Court of Kenya at
Kisumu (Mr. P.K.K. Arap Birech, commissioner of Assize)
dated 27
th
July, 2000
in
H.C.C.C. NO. 348 OF 1997)

R U L I N G

This is an application brought under rule 4 of this Court’s Rules seeking an extension of time in which to file a record of appeal. The notice of appeal was filed in time by the applicant’s previous counsel hence there was desire and intention on the part of the applicant to challenge the decision of the superior court. Under rule 4 of this Court’s Rules the Court has unfettered discretion but this discretion must be exercised on good reasons. It is upon the applicant to explain to the Court’s satisfaction the reason for the delay. In the instant application it has been said that the applicant’s previous counsel abandoned her. There is a delay of ten months. Mr. K’Owino for the respondent thinks that the explanation given for the delay is not good enough. Mr. Kasamani for the applicant reminds me that the judgment obtained in favour of the respondent is now in excess of Shs. 1,000,000/-

I have considered all that has been urged before me and in view of the fact that the applicant had demonstrated her desire to appeal and that it was her previous counsel who abandoned her then she should not be punished for mistakes of her previous counsel. Consequently, this application is allowed and the applicant is granted an extension so that she should file her record of appeal within 30 days from the date of this ruling. As regards costs, I direct that the applicant is to pay to the respondent Shs. 5,000/- as costs of this application which amount is to be paid within 30 days in default execution to issue.

Dated and delivered at Kisumu this 26th 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