



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
CORAM: SHAH, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI 359 OF 2001
BETWEEN

JOHN GITAU KAROGO

ANWARALI BROTHERS LIMITEDAPPLICANTS

AND

PAUL KHAEMBA RESPONDENT

**(An application for extension of time to validate the
notice of appeal lodged out of time against a
judgment of the High Court of Kenya at Eldoret
(Nambuye J) dated 6th August, 2001**

in

ELD. H.C.C.C. NO. R 13 OF 1999)

RULING

The respondent, though served with the hearing notice for to-day's hearing, is not here. The application before me, as amended, is to validate a notice of appeal lodged by the applicants, some eight days out of time. It does appear that the judgment sought to be appealed against was not delivered on the date notified for such delivery, that is 3rd August, 2001. In the absence of a replying affidavit by or on behalf of the respondent, I have no reason to believe that the applicants' advocates were aware of the new date for delivery of judgment. The factor that has weighed on my mind is that although the applicants' advocates were aware of the main contents of the judgment by 14th August, 2001, they did not lodge the notice of appeal until 28th August, 2001. They could have lodged the same by 20th August, 2001 to be within time. However, the eight day delay is not so inordinate as to disentitle the applicants from exercising their undoubted right of appeal. It is not the applicants' fault that their notice of appeal was not lodged in time.

I allow this application and order that the notice of appeal lodged on 28th August, 2001 is deemed to be lodged in time. As a copy of proceedings has not been availed to the applicants I order that the record

of appeal be lodged within 60 days after receipt by the applicants' advocates of such copy. I make no order as to costs.

Dated and delivered at Nakuru this 19th day of February, 2002.

A. B. SHAH

JUDGE OF APPEAL

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

DEPUTY REGISTRAR