



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OWUOR, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 200 OF 2001

BETWEEN

DUNCAN GATERU .....APPLICANT

AND

JAMES RUO WAITHAKA .....RESPONDENT

(Application for extension of time to file Notice and  
record of appeal out of time from the ruling of the  
High Court of Kenya at Nairobi (Mr. Justice Etyang)  
dated 22nd May, 2001

in

H.C. P & A NO. 1801 OF 1994)

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R U L I N G

Prior to the hearing of this application and before counsel for the applicant made his submissions, I intimated to him that the material he had on record was in my view not sufficient for the purpose of determining the application. He nevertheless went ahead and argued the application. The submissions made to me subsequently did not advance the application's position any further. In the result, I am unable to exercise my unfettered discretion granted to me under **rule (4) of the Rules of this Court**, which **Rule**, this application has been brought, on the ground that the material upon which the application is based is too scanty to enable me to consider whether or not to grant the extension sought, for time to file a Notice of appeal and record of appeal out of time on the established principle. See Leo Sila Mutiso V Rose Hellen Wangari Mwangi C. Application No. Nai. 255 of 1997 (unreported):

"It is now well settled that the decision is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of delay. Secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of 'prejudice' to the respondent if the application is granted".

To my mind the affidavit file herein, being the only document filed to support the application, does not provide sufficient material upon which I can determine the issue set above. The application is therefore dismissed with costs to the respondent.

Made and delivered at Nairobi this 8th day of February, 2002.

E. OWUOR

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**