



REPUBLIC OF KENYA
IN THE COURT OF APPEAL

AT KISUMU

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

CIVIL APPLICATION NO. NAI. 247 OF 2001 (KSM. 39/2001)

BETWEEN

RICHARD NG'ANG'A CHEGEAPPLICANT

AND

NAOMI LINA WERERESPONDENT

(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 Kakamega (Mr.
Justice B.K. Tanui) dated 17th November, 2000**

in

H.C.C.C. NO. 108 OF 1997)

R U L I N G

This is an application under **rule 4** of the Court's Rules for extension of time within which to file both the notice and record of appeal.

The affidavit in support of the application is by the present advocate who seems to blame the applicant's previous advocate for the delay in filing both these documents in Court. The affidavit attempts without success to say there has been no inordinate delay in bringing the application.

The judgment sought to be appealed from was delivered on November 7, 2000 and the insurers of the applicant were not informed until May 7, 2001. The respondent in opposing the application indicated that the previous advocate was on February 2, 2001 made aware of the existence of the said judgment when that advocate was served with notice of taxation which can only be after judgment has been entered.

It seems to me that Mr. Kasamani, present Counsel for the applicant, is not in a position to positively swear as to what caused the delay in filing the application or the reason for the delayed notice of appeal.

By any standard a delay of seven months is inordinate and it has been made worse by the absence of any explanation. I, therefore, decline to exercise my discretion and I dismiss the application with costs.

Dated and delivered at Kisumu this 14th day of March, 2002.

M. Ole KEIWUA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR