



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT KISUMU**

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

**CIVIL APPLICATION NO. NAI. 241 OF 2001 (KSM. 40/01)**

**DR. VIRAM GORDHANIA.....APPLICANT**

**AND**

**LAKE NURSING HOME LTD.....RESPONDENT**

**(An application for extension of time to file and serve  
Notice of Appeal and Record of Appeal out of time from the  
decision of the High Court of Kenya at Kisumu (Hon. Justice  
Wambilyangah) delivered on 12/10/1999**

**in**

**H.C.C.C. NO. 423 OF 1994**

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**RULING:**

This is an application for extension of time within which to file and serve the notice of appeal and record of appeal out of time. There was an appeal which had been struck out on 21st June, 2001 and the application was filed in Court on 29th June, 2001. That was without any delay. The reason why the earlier appeal was struck out was because the copy of the decree appealed from was undated. For that reason the applicant had been penalised by having the appeal struck out. He should not be punished a second time for that particular default. I say this because the copy of the decree which has been included in the application is not free from faults either.

That much is conceded by Mr. Kasamani counsel for the applicant who prays that his application for extension of time be allowed on condition that he would make sure that a proper copy of the decree is included in the proposed record of appeal. It is common ground that the copy of the decree in the application does not have the date on which it was "given" by the learned Judge. According to the respondent, the applicant had a dated copy of the decree included in the earlier record of appeal. That decree had not to date been set aside to pave the way for yet another dated copy of the same decree being obtained. To my mind that is a major default which cannot be ignored at this stage.

I agree that the copy of the decree in the application is defective as it is shown to be dated 12th October, 1999 when judgment was delivered. Yet it is shown to have been given on 14th December, 1999. In my judgment that defect is sufficiently grave to dispose of the application. In that circumstance, I dismiss the application with costs.

**Dated and delivered at Kisumu this 12th 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**