



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**

**AT KISUMU**

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

**CIVIL APPLICATION NO. NAI. 179 OF 2001 (KSM.29 OF 2001)**

**BETWEEN**

**ALEXANDER NYAKWAKA .....APPLICANT**

**AND**

**ANDMASILIANA AWITI ONYUKA .....RESPONDENT**

**(Application for extension of time within which to lodge and  
serve Notice of Appeal and Record of Appeal out of time  
from the Ruling of the High Court of Kenya at Kisii  
(Justice Waweru) dated 9th June, 2000  
in**

**H.C.C.C. NO. 418 OF 1996)**

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**R U L I N G**

This is an application under rule 4 of the Court's Rules. It seeks extension of time within which to lodge a Notice of Appeal and Record of Appeal. The reason for the failure to lodge the Notice of Appeal and Record of Appeal in time is that the applicant's previous advocate failed to attend Court and that led to the case being decided in favour of the respondent and without that eventuality being communicated to the applicant. The decision complained of was delivered on June 9, 2000 in the applicant's absence whom the learned Judge says was served but did not appear at the hearing of the application. The applicant did not also file any grounds opposing the application.

Though the applicant tends to blame his advocate for these failures, nothing has been heard from the said advocate to show that what is heaped on him by the applicant is correctly stated. I have no way of verifying all that is urged by the applicant. The respondent opposes the application and states that it was the applicant's fault that no notice of appeal or record of appeal was filed in time. I agree with this submission.

To begin with, the applicant does not even attempt to show or disclose when he became aware of the decision of the superior court which is a relevant matter on which I have to exercise my discretion on whether to extend time or not. Accordingly, I dismiss the application with costs.

**Dated and delivered at Kisumu this 11th 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**