



**IN THE COURT OF APPEAL**

**AT NAIROBI**

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

**CIVIL APPLICATION NO. NAI. 417 OF 2001**

**BETWEEN**

**JOESKILONGI.....APPLICANT**

**AND**

**HOUSING FINANCE COMPANY (K) LIMITED .....FIRST RESPONDENT**

**NAMBAK LIMITED .....SECOND RESPONDENT**

**(Application for further extension of time to file the**

**Record of Appeal out of time in an intended appeal**

**from the Ruling of the High Court of Kenya at**

**Nairobi (Oguk J) dated 22nd June, 2000**

**in**

**H.C.C.C. NO. 1176 OF 1998)**

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**R U L I N G**

The applicant *Joses Kilongi* brought an application to this Court under rule 4 of the Rules of this Court seeking extension of time to lodge his notice of appeal and record of appeal out of time. That application, Civil Application No. Nai. 127 of 2001 was heard by a learned single Judge of this Court, O'Kubasu, JA . The learned single Judge granted the application and ordered that the Notice of Appeal be lodged within seven days of 28th September, 2001 and that the record of appeal be lodged within 21 days of the lodgment of the notice of appeal. The applicant lodged the notice of appeal in time as granted but according to his advocate Mrs. Muriungi, he was unable to lodge the record of appeal within the 21 day period granted as the copy of proceedings was not availed to the advocate until 27th November, 2001. It is for that reason that the applicant is now before me seeking further extension of time to lodge the record of appeal. This application was filed within 3 days of the receipt of the copy of proceedings. There is no delay there.

Mr. Makori who appears for the first respondent objects to the application. He stated, from the bar, that the copy of proceedings was received by Mrs. Muriungi prior to the date she mentioned. There is no affidavit filed to controvert what Mrs. Muriungi has deposed to. In the absence of such an affidavit I am unable to accept Mr. Makori's assertion from the Bar. Any event the delay has not occasioned any prejudice to the first respondent. Mrs. Muriungi has moved the court with alacrity and I cannot punish her for that.

Mr. Chege who appeared for the second respondent stated that his client (the purchaser at an auction sale) has no interest any more in the proceedings as he has bowed out of buying the suit property, **L.R. NO. NAIROBI/BLOCK 76/161, Buru Buru Phase III**. He left the matter to me.

I allow this application and order that the record of appeal be lodged within the next 21 days. Costs of this application will be costs in the intended appeal.

**Dated and delivered at Nairobi this 28th day of June, 2002.**

**A.B. SHAH**

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**JUDGE OF APPEAL**