



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: TUNOI, OWUOR & KEIWUA, J.J.A)

CIVIL APPLICATION NO. NAI. 427 OF 2001

BETWEEN

PONANGIPALLI VENKATA RAMANA RAO APPLICANT

AND

UHURU HIGHWAY DEVELOPMENT LIMITED1ST RESPONDENT

KAMLESH MANSUKHLAL DAMJI PATTNI.....2ND RESPONDENT

PANSAL INVESTMENT LIMITED3RD RESPONDENT

GRAND HOTELS MANAGEMENT4TH RESPONDENT

CENTRAL BANK OF KENYA5TH RESPONDENT

DEPOSIT PROTECTION FUND BOARD6TH RESPONDENT

JOSEPH KITTONY7TH RESPONDENT

(In an intended appeal from the Ruling of the High Court at Nairobi, Oguk J, dated 4th October, 2000

in

H.C.C.C 509 of 1999)

RULING OF THE COURT

This is a reference, under rule 54(1) (a) of the Rules of this Court seeking to reverse or vary or discharge the orders of a single Judge of this Court (O'Kubasu, J.A) given on 12th March, 2002 whereby he dismissed an application for enlargement of time to file and serve the Notice of appeal and record of appeal on a party directly affected by the decision intended to be appealed from. The decision which the applicant was dissatisfied with was given by the superior court (Oguk, J.) on 4th October, 2000, while the application for enlargement of time was lodged in this Court on 6th December, 2001. The application was supported by an affidavit which endeavoured to give an explanation as to why the notice of appeal had

not been served on one Mr. Gitari T. Njeu, Receiver/Manager of Grand Regency Hotel, a party, who alleged:-

"That the applicant has now heard albeit belatedly so, that the said Mr. Njeu's appearance and peruse in the proceedings is crucial for the effective and conclusive determination of the matters raised in the intended appeal".

A reference such as this one filed by way of Notice of motion is like an appeal although it is not. Nevertheless one must show that the learned single Judge of this Court in exercising his unfettered discretion under rule 4 of the Court of Appeal Rules made errors which call for an interference by this Court. In his submission to us, Mr. K'owade on behalf of the applicant did not mention any single error, if any, that was committed by the learned single Judge. To the contrary, he conceded to not so few omissions and mistakes or oversights attributable to the applicant's previous counsel. Having listened to all that was said in support of the application, we are not persuaded that there was any error on the part of the learned single Judge such that would call for our interference.

Upon a careful consideration of the matter as a whole, we are satisfied that the learned single Judge did not commit any error in principle or otherwise in refusing to exercise his discretion in favour of the applicant. We cannot help but mention that there was a clear delay of not less than seventeen months on the part of the applicant before he finally lodged this application. The decision that offended him was given on 4th October, 2000, when already the orders of this Court in C.A NO. 91 OF 1999 prohibiting the filing of any other applications in these related matters were in place, the same having been made on 24th August, 2000. The said orders cannot therefore be the cause of the delay as claimed. The delay was inordinate. Yet, as clearly found by the learned single Judge, it remained unexplained or unaccounted for. No indulgence can be extended in case of such an inordinate delay in the absence of a satisfactory explanation. This is the express finding of the learned single Judge and upon which, in our view, he cannot be faulted: "In conclusion, I would say that the applicant has failed to give sufficient reasons why there was this inordinate delay in bringing this application and has failed to explain why he did not serve the Receiver Manager".

We must express the concurrence of this Court with regard to its reluctance to interfere on a matter of discretion where no error of principle is alleged and no misapprehension on the part of the learned single Judge is suggested. In the result, this application fails and we dismiss it with costs.

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

P. K. TUNOI

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JUDGE OF APPEAL

E. OWUOR

.....

JUDGE OF APPEAL

M. Ole KEIWUA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR