



**IN THE COURT OF APPEAL**

**AT NAIROBI**

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

**CIVIL APPLICATION NO. NAI 21 OF 1998**

**BETWEEN**

**OCEAN FREIGHT COMPANY LIMITED.....APPLICANT**

**AND**

**OAKDALE COMMODITIES LIMITED.....RESPONDENTS**

**(Being an Appeal from the judgment of the High Court of  
Kenya at Nairobi (Lady Justice Owuor) dated 6th day  
of August, 1992( re-dated again on 19th January,  
1998)**

**in**

**H.C.C.C 4434 OF 1989)**

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**R U L I N G**

The judgment the subject matter of the intended appeal was delivered way back in 1992. Though the initial blame lay squarely on the then learned Judge of the superior court, the applicant cannot offer a reasonable explanation for its inactivity since 4th February, 1998.

It is worthy of note that Civil Application No. 198 of 1995 granted leave to the applicant to lodge its appeal out of time after a successful reference to the full court. However, the success was short lived for on 24th September, 1997, Civil Appeal No. 156 of 1995 was struck out on the ground that the decree incorporated in the record of appeal was fundamentally faulty as it did not contain the date when the judgment was delivered. Though this application was lodged in the Registry on 4th February, 1998, after the judgment had been dated on 19th January, 1998, the same was not been brought up for hearing until precisely four years afterwards. Mr. Oonge for the applicant frankly says that he is unable to offer any explanation.

In my view the applicant is guilty of laches. The delay in prosecuting the application is too inordinate and cannot be condoned. To resurrect a matter that came to an end ten years ago would be prejudicial to the respondent. As a matter of public policy procrastination in civil litigation is not to be encouraged. Litigation must be brought to an end. In my opinion, I have no basis to exercise my discretion in favour of the applicant. I refuse the application and I order that it be dismissed with costs.

**Dated and delivered at Nairobi this 20th day of June, 2002**

**P. K. TUNOI**

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**JUDGE OF APPEAL**