



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GICHERU, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 50 OF 2002 (UR.29/2002)

BETWEEN

AFRICAN AIRLINES INTERNATIONAL LIMITED.....APPLICANT

AND

THE EASTERN & SOUTHERN AFRICAN

TRADE & DEVELOPMENT BANK (THE PTABANK).....RESPONDENT

(An application for extension of time to file Notice of Appeal and Record of Appeal in an intended appeal from the Ruling of the High Court of Kenya at Milimani (Hewett, Comm. of Assize dated 20th April, 2000

in

H.C.C.C. NO. 1361 OF 1999)

RULING

In this application, the applicant's intended appeal arises from the order of the superior court purported to have been given on 20th April, 2000. That order was the subject of a review and injunction application under **sections 3A and 80 of the Civil Procedure Act and Orders XXXIX(1) and XLIV of the Civil Procedure Rules** dated 17th July, 2000 which was not heard on merit for the reason that the said order was not formally extracted consequent to which the review and injunction application was on 23rd January, 2001 dismissed

with costs with leave to appeal being refused. That application had been made 88 days from the date of the order the subject-matter of the review and injunction application. The applicant's Notice of Appeal in respect of the same order was lodged on 15th February, 2002 - 666 days from the date of the said order. The present application was made on 7th March, 2002 - 686 days from the date of the order intended to be appealed from - seeking:

- 1.Extension of time within which to apply for copies of the proceedings so that the applicant's letter dated 22nd January, 2002 and received in the superior court on 23rd day of the same month be deemed to have been duly lodged for that purpose within the extended time.
- 2.Extension of time to lodge and serve the Notice of Appeal against the order of the superior court dated 20th April, 2000.
- 3.Extension of time to lodge and serve the record of appeal.
- 4.That the Notice of Appeal lodged on 15th February, 2002 be deemed to have been lodged within the extended time.

At the hearing of this application on 23rd April, 2002 the force of the submission of counsel for the applicant was that from the nature of the applicant's intended appeal, the dictates of justice calls for the extension of time sought to be granted so that the applicant may seek redress in the highest court in the land. But without delving any further into this matter, let me say that the dictates of justice also calls for compliance with the rules of this Court. The ends of justice is not a talisman even where there is gross flouting of the relevant rule (s) of the Court as in the present application where the dilatoriness as is set out above shrieks against the exercise of discretion in favour of the applicant under **rule 4** of the Rules of this Court. Without saying any more than that, I consider the applicant's application unmeritorious and the same is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 3rd day of June, 2002.

J.E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR