



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CIVIL APPLICATION NO NAI.161 OF 2002**

**BETWEEN**

**RENZO DALL'AGNESE .....APPLICANT**

**AND**

**GIANFRANCO GUERRATO .....1ST RESPONDENT**

**GIORGIO GUERRATO .....2ND RESPONDENT**

**O & O EMPORIUM LIMITED .....3RD RESPONDENT**

**RULING**

At the hearing of this application on 12th July, 2002 Counsel for the applicant was allowed to withdraw prayer number two of the said application leaving prayer number one which sought extension of time to lodge the notice and record of appeal against the order of the superior court given on 29th May, 2002. The present application was made on 19th June, 2002 - 7 days outside the prescribed period for lodging the notice of appeal. The order referred to above stayed the proceedings in the aforesaid, court's Civil Case No. 533 of 2002 and referred the dispute between the parties to arbitration. The applicant submitted himself to the arbitration proceedings but the respondents took the position that they were not parties to the Agreement which contained the arbitration clause the basis of which the order intended to be appealed against was made. This, according to counsel for the applicant, was the reason for not lodging the notice of appeal within the prescribed period. The respondents do not deny having taken the position referred to above which stand they still maintain; but urges that a perusal of Agreement in question leaves no doubt that they were not parties to it and therefore not subject to the arbitration process resulting from the order intended to be appealed against. Hence, the applicant should have made up his mind whether to challenge the aforesaid order and lodge his notice of appeal within the prescribed period or better still seek a review of the said order instead of indulging in extraneous applications which he made in the superior court and which had nothing to do with the order intended to be appealed from. To counsel for the respondents therefore, the applicant does not deserve the extension of time sought. Yet from the applicant's supporting affidavit and the submission of his counsel, the extraneous applications he is alleged to have indulged in were in pursuance of the arbitration proceedings ordered by the superior court as a result of an application by the 1st and 2nd respondents under section 6(1)(a) and (b) of the Arbitration Act. To this end, according to counsel for the applicant, the delay in lodging the notice of appeal within the prescribed period cannot be visited on the applicant.

Looking at the Agreement referred to above, it is arguable whether or not the respondents were parties to it and therefore subject to the arbitration clause number 11 of the same. This factor was neither alive to the applicant, the respondents nor to the superior court during the proceedings out of which the order intended to be appealed against arises. The delay in lodging the notice of appeal as indicated earlier in this ruling is 7 days. In order to avail the parties to this application the opportunity to ventilate their grievances in the highest Court in the land and in exercise of my discretion under rule 4 of the Court of Appeal Rules, I grant the applicant's application so that the time for lodging the notice of appeal is extended by 7 days from the date hereof and the time for lodging the record of appeal is extended by 15 days from the date of lodging the notice of appeal. The costs occasioned by this application assessed at Kshs.10,000/= are awarded to the respondents and shall be paid within the next 30 days from today's date failing which execuDtaitone d toa nedn sduel.

**Delivered at Nairobi this 31st day of July, 2002.**

**J. E. GICHERU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**