



**IN THE COURT OF APPEAL  
AT NAIROBI**

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

**CIVIL APPLICATION NO. NAI. 70 OF 2002**

**BETWEEN**

**OMEGA CHEMICAL INDUSTRIES LTD .....1ST APPLICANT**

**CRISPUS M. MURIUKI .....2ND APPLICANT**

**AND**

**BARCLAYS BANK OF KENYA LIMITED .....RESPONDENT\**

**(An application seeking leave for the extension of time  
to file and serve a fresh Notice of appeal and the  
Memorandum and Record of Appeal out of time in the  
intended appeal against the Judgment of the High  
Court of Kenya at Nairobi (K.H. Rawal J) dated 24th  
July, 2001**

**in**

**H.C.C.C. NO. 1247 OF 1996)**

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**RULING**

Two applicants, *Omega Chemical Industries Limited and Crispus M. Muriuki*, seek leave to file a fresh notice of appeal as well as record of appeal out of time. The superior court (Rawal, J) delivered judgment on 24th July, 2001. The notice of appeal was lodged on 1st August, 2001, in time. It was served in time. Notice of address for service was lodged by the respondent on 9th August, 2001. Copies of proceedings and judgment were applied for by the applicants' advocates' letter dated 31st July, 2001. The letter was copied to the respondent's advocates. Till then all was in order. The copies of proceedings and judgment were available by 5th December, 2001. These were paid for on 5th December, 2001. For one reason or another (I know not) the copies were certified and were received by the applicants' advocates on 14th January, 2002 as per the certificate of delay in the record before me. A certified copy of the decree was not available until 26th February, 2002. I am not told why the decree was not extracted earlier. However, the respondent takes no umbrage thereon.

Mr. Kagiri who appeared for the applicants stated that by the time he received a certified copy of the decree the time to lodge the appeal had already expired. That is almost correct. If the uncertified copies of proceedings and judgment were available on 5th December, 2001 the time to lodge the record of appeal

would have expired on 27th February, 2001, taking into account the Christmas vacation period, that is, 21st December, 2001 to 13th January, 2002, both days inclusive. I would give Mr. Kagiri the benefit of the fact that by the time he received a certified copy of the decree he had only one day left to lodge the appeal. In these circumstances it was quite proper for the applicants to lodge this particular application. The problem is that it was not lodged until 9th April, 2002, some 39 days after receipt of the said certified copy of the decree. It does take some time to prepare an application like this one but not 39 days.

There is the unexplained delay of about 30 days or less in lodgment of this application. Mr. Kagiri frankly and candidly admitted that this delay has not been explained. The questions that, therefore arise, are: Is the delay fatal to the application? Does the delay disentitle the applicants to exercise their undoubted right of appeal? Despite Mr. Muli's urging to the contrary I am minded to allow the application keeping in mind the fact that the unexplained delay is not inordinate and that the respondent will suffer no prejudice if the applicants are allowed to lodge the appeal. I am not prepared to say that the intended appeal is frivolous. It could well be arguable. It is not necessary to grant leave to file a fresh notice of appeal as the one already filed is still on record. It has not been struck out.

I grant leave to the applicants to lodge their record of appeal by 21st October, 2002 and they can use the notice of appeal lodged on 1st August, 2001 to base their record of appeal. The applicants will however pay to the respondent its costs of this application within the next 30 days. I assess these costs at Shs.6,000/=. If these costs are not paid within the time given, execution may issue.

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

**A.B. SHAH**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**