



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT KISUMU**  
**CORAM: TUNOI, J.A. (IN CHAMBERS)**

**CIVIL APPLICATION NO. NAI. 96 OF 2002 (KSM.10/02)**

**BETWEEN**  
**AMOS NDUNG'U .....APPLICANT**

**AND**  
**VINCENT NIVA NYONGESA .....RESPONDENT**

**R U L I N G**

This is an application seeking leave to extend time for filing the Notice of Appeal and the Record of Appeal. It is brought under rule 4 of the Rules of this Court.

The learned Judge of the superior court delivered the judgment the subject of the intended appeal on 22nd February, 2002, some two years after the trial was concluded. The applicant could not be traced immediately to give instructions as he had relocated to a distant rural market centre. However, this application was mounted on 22nd April, 2002. The delay in setting in motion the procedures of appeal is not inordinate and has been explained to my satisfaction. I will, therefore, exercise my discretion in favour of the applicant. I grant the application as prayed. Leave is granted to the applicant to lodge his appeal out of time. The notice of appeal shall be filed within 7 days hereof and the record of appeal shall be lodged 21 days after the service of the Notice upon the respondent. The costs of this application shall be in the intended appeal in any event.

**Dated and delivered at Kisumu this 28th day of November, 2002.**

**P. K. TUNOI**

**JUDGE OF APPEAL**

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