



**IN THE COURT OF APPEAL**

**AT NAIROBI**

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

**CIVIL APPLICATION NO. NAI. 158 OF 2002**

**BETWEEN**

**VERONICAH RWAMBA MBOGOH.....APPLICANT**

**AND**

**MARGARET RACHEL MUTHONI.....1ST RESPONDENT**

**ARTHUR MUNENE MBOGOH.....2ND RESPONDENT**

**(Application for extension of time to file and serve**

**record of appeal out of time in an intended appeal**

**from the ruling of the High Court of Kenya at**

**Nairobi (Mr. Justice Visram) dated 14th November,**

**2001**

**in**

**H.C. SUCCESSION CAUSE NO. 989 OF 1999)**

**\*\*\*\*\***

**R U L I N G**

In this Notice of motion brought under **Rule 4 and 81** of the Rules of this Court (the Rules), the applicant is seeking leave for extension of time within which she can file and serve the record of appeal. The grounds upon which she relies are that:

"That the applicant's advocate honestly believed that the time within which the applicant can file the record of appeal was to expire on the 12th June, 2002. That the applicant lateness in filing the record of appeal in good time was not intentional nor inordinate.

That the applicant has an arguable appeal."

The affidavit filed in support of the application by Wanja. G. Wambugu, counsel for the applicant,

discloses the following facts:

That on the 14th day of November, 2001 Visram J. delivered a ruling in **Succession Cause No. 989 of 1999** in which he dismissed the applicant's application to review his earlier ruling that had locked her out of the Estate of one Gerishon John Mbogoh (a man she believed to be her husband). Obviously the applicant was upset with that ruling and gave instruction to her counsel and a Notice of appeal was promptly filed on 19th November, 2001. On the same day she applied to be supplied with certified copies of the proceedings and copied the letter to the respondent's counsel. In anticipation to take advantage of the proviso to **rule 81** in the event that there was a delay in the preparation of the proceedings. On 5th April, 2002, Counsel for the applicant was informed that the proceedings were ready for collection upon payment of the court charges. The certificate annexed to the copy of the proceedings indicates that the same were certified on 9th April, 2002 and collected on 11th April, 2002. The record of appeal was thereafter lodged on 17th June, 2002, some 5 days after the prescribed time under **rule 81(1) of the Rules**, for lodging the appeal. Counsel for the applicant has given a genuine reason for this delay. She says that she made a blunder and miscalculated the time and was under the impression that the time expired on 12th June, 2002. I see no reason why I should not believe her. Hers was a human error. Immediately after discovering her mistake, she quickly filed this application on 17th June, 2002.

Part of Mr. Mbigi's objection is that there is no certificate of delay included in this application to show that the delay could be attributed to the preparation of the record by the court. My view is that a certificate of delay is a document in terms of **rule 85 (2a)** which can be put in the record of appeal by way of supplementary affidavit. That being the case, it would not amount to such an important document that warrant me to reject the applicant's application for extension of time for her to file the substantive appeal. In the particular circumstances of this case, I am satisfied from the evidence before me that the minimal delay of 2 or so days was not inordinate and has been sufficiently explained.

I hereby grant the application and order that the applicant shall file her record of appeal within 10 (ten) days from today's date and thereafter serve the same within 5 (five) days from the date of lodging the record. Costs of the application shall be in the intended appeal.

**Dated and delivered at Nairobi this 15th day of November, 2002.**

**E. OWUOR**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**