

REPUBLIC OF KENYA
 IN THE COURT OF APPEAL
 AT NAKURU
 (CORAM: KWACH, J.A. (IN CHAMBERS))
 CIVIL APPLICATION NO. NAI. 346 OF 2000
 BETWEEN

JOHN KARIUKI KARANJA..... 1ST APPLICANT
 SAMWEL NDEGWA 2ND APPLICANT
 AND
 GLADYS WANJIRU KARUGA RESPONDENT

(Application for extension of time to file the Record of Appeal in an intended appeal from the Judgment & Decree of the High Court of Kenya at Nakuru (Justice Rimita) dated 9th March, 1998 in H.C.C.C. NO. 529 OF 1996)

RULING

This is an application under rule 4 of the Court of Appeal Rules for extension of time to file a Record of Appeal.

The decision against which John Karanja and Samwel Ndegwa (the applicants) wish to appeal was given by Rimita J on 9th March, 1998. After filing a Notice of Appeal the applicants applied to the superior court for copies of proceedings and judgment on 18th March, 1998. These were furnished on 12th April, 2000.

It is now claimed by the advocates for the applicants that after receipt of copies of proceedings and judgment on 12th April, 2000 they had to wait for a Certificate of Delay to be issued (COD). This was apparently issued on 3rd August, 2000. Even then they took no action until 13th November 2000 when they filed this application.

The reason given by the applicants' advocates for not lodging an appeal after receiving copies of proceedings and judgment is that they could not do so without a Certificate of Delay. That is not a good enough reason because a Certificate of Delay is not a primary document within the meaning of rule 85(1) of the Court of Appeal Rules and can always be included in a supplementary record of appeal. The consequence of this is that the delay from 12th April, 2000 to 13th November, 2000 has not been explained and since the delay is quite inordinate I am entitled, in exercising my discretion, to disregard the indication by Miss Otieno, for the respondent, that she does not object to the application being granted.

Accordingly, I decline to exercise my discretion in favour of the applicants and dismiss the application with no order as to costs.

Dated and delivered at Nakuru this 21st day of February, 2001.

R.O.

KWACH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR