



**IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: KWACH, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI.185 OF 2000**

**BETWEEN**

**JAMES ARTHUR MBUI (Suing as Administrator of the Estate  
of EMILY GATHONI (Deceased) & 5 Others .....APPLICANTS**

**AND**

**ESSO KENYA LIMITED & ANOTHER .....RESPONDENTS**

**An Application for Extension of time to file and serve  
Notice of Appeal in an intended Appeal from the High  
Court of Kenya (Mrs. Rawal Commissioner of Assize) dated 10th  
May 2000**

**in**

**H.C.C.C. NO. 99 OF 1989)**

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**R U L I N G**

This is an application under **rule 4** of the Court of Appeal Rules by a group called *Keroha Esso Services (the applicants)* for extension of time to file and serve a Notice of Appeal. The decision against which the applicants wish to appeal was given by *Rawal J* on 10th May, 2000, when she was still a Commissioner of Assize. She dismissed with costs a civil suit (HCCC No. 99 of 1989) which the applicants had filed against the respondents way back in 1989, for want of proseMcru tiSoongo.mo, for the applicants, has given three reasons for failing to file a Notice of Appeal within the time prescribed by the Rules. First, he says that the ruling was delivered in the absence of his firm. Secondly, he says that although he learnt on 18th May, 2000 that the ruling had been delivered on 10th May, 2000, his firm could not file a Notice of Appeal without first obtaining instructions to do so from the clients. And thirdly, he says there has been no delay in bringing the application.

The first reason cannot be true because notice for delivery of the ruling was sent to the Advocates for the parties. In any event, the record shows that on 10th May, 2000 *Mr Kiiru* held a brief for *Mr Kariuki* for the plaintiffs. So I find as a fact that the applicants' Advocates were aware as early as 10th May, 2000 that the ruling had been delivered. But even if I were to give them the benefit of doubt and accept that they learnt about it on 18th May, 2000, they still had 6 clear days to file a Notice of Appeal.

*Mr Sogomo* says that they could not file a Notice of Appeal without obtaining instructions to do so from the applicants. There is no substance in this submission because the mere filing of a Notice of Appeal does not constitute an irrevocable commitment by a party to file an appeal. And it costs only Shs 450/- to file it. An Advocate does not need a client's instructions to file a protective Notice of Appeal.

As I have already, said the ruling was delivered on 10th May, 2000. This application was not brought until 11th July, 2000. The reason given for this delay namely, that the Advocates were waiting for instructions from the clients is unacceptable.

For these reasons, I decline to exercise my discretion in favour of the applicants and dismiss the

application with costs to the respondents assessed at Shs 16,000/-, to be paid within 14 days from today, and in default execution to issue.

**Dated and delivered at Nairobi this 6th 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**