

**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: BOSIRE, J.A (IN CHAMBERS))
CIVIL APPLICATION NO. NAI.194 OF 2000**

BETWEEN

STANDARD CHARTERED BANK LTDAPPLICANT

AND

FLORENCE MUENI KYALORESPONDENT

**An application for extension of time to file a notice of
appeal and record of appeal out of time from the
order of the High Court of Kenya at Nairobi (Justice
Mbaluto) dated 6th October, 1999**

in

H.C.C.C. No.647 of 1999)

R U L I N G

This is an application under rule 4 of the Court of Appeal Rules, for an extension of the time within which to file and serve a Notice of Appeal and a record of appeal. The applicant, Standard Chartered Bank Limited, being aggrieved with the order of the superior court made on 6th October 1999 granting an injunction against it in H.C.C.C. No.647 of 1999 filed Civil Appeal No.255 of 1999. That appeal was, on 15th June, 2000 struck out as incompetent as the applicant did not include in the record of appeal a certified copy of the order appealed against. In his application before me the applicant applies that he be granted an extension of time within which to file a fresh Notice of Appeal, and a record of appeal in order to restart the appellate process. His case is that the omission to include a certified copy of the order against which an appeal is intended, in the record of the struck out appeal was an oversight.

Mr Matemu, for the respondent Florence Mueni Kyalo, opposes the application on the ground that the applicant has neither offered a satisfactory explanation as to its failure to include a certified copy of the order in the record of its struck out appeal, nor the delay of about 32 days in taking out this motion. Mr Ngatia, in reply, submitted that the delay of about 32 days is explainable which explanation according to him is discernible from the record.

It is trite law that a party whose appeal has been struck out as incompetent may restart the process of appeal by seeking an extension of the time within which to file and serve a fresh Notice of Appeal and a record of appeal. He must however make the application without undue delay. The duty to show that such application was made without undue delay good reason for not bringing this application earlier. That reason was not given in the affidavit in support of the application. The explanation given from the bar by Mr Ngatia may not be considered as the respondent did not have any opportunity of responding to it.

Clearly the delay of 32 days in taking out this motion is long. I do not however consider it inordinate. The applicant acted fast in lodging its earlier appeal, clearly showing that it was keen in pursuing its appeal. There must have been good reason for the delay of 32 days. I have unfettered discretion under rule 4, aforesaid, to extend the time and in exercise of that discretion, and considering the circumstances of this matter, such delay is not inordinate as will make me deny the applicant an opportunity of pursuing its intended appeal.

In the result I am minded to and hereby extend the time within which to file and serve a fresh Notice of Appeal by 7 days from the date hereof, and a further 30 days within which to lodge and serve a record of appeal. The respondent shall have the costs of this application which I assess at Kshs.15,000/=.

Dated and delivered at Nairobi this 1st day of March, 2001.

S.E.O. BOSIRE

JUDGE OF APPEAL

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

DEPUTY REGISTRAR