

**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 61 OF 1998**

BETWEEN

JAMES MACHARIANJORE.....APPLICANT

AND

PETER PAUL MBURUNDURURI.....RESPONDENT

**(An application for extension of time to file a notice of
appeal in an intended appeal from a Ruling of the High
Court of Kenya at Nairobi (Mbitio, J.) dated 3/12/97**

in

H.C.C.C. NO. 807 OF 1997)

R U L I N G:

In this application, the applicant is seeking extension of time to file and serve a notice of appeal and the record of appeal. The applicant's original **Civil Appeal NO. 289 of 1997** was struck out by this Court on 16th March, 1998 for the reason that the record of that appeal did not comply with **rule 85(1)(f)** of the Court of Appeal Rules. The present application was made on 19th March, 1998. There was therefore no dilatoriness in making the application.

Counsel for the respondent argues that the applicant's intended appeal is frivolous and on account of that the same should be rejected. Counsel, however, submits that if the Court was inclined to grant the applicant's application, then the costs occasioned by said application should be awarded to the respondent.

It is not for me as a single judge of this Court in an application such as the present one to determine whether or not the applicant's intended appeal is meritorious. But one thing is clear: the applicant cannot be accused of dilatoriness in making the present application. On account of this and in exercise of my discretion under rule 4 of the Court of Appeal Rules, I grant the applicant's application so that the time for lodging the notice of appeal is extended by 7 days from today's date and the time for lodging the record of appeal is extended by 15 days from the date of lodging the notice of appeal within the extended time. The costs occasioned by the applicant's application assessed at K.Shs. 3,000/- are awarded to the respondent and should be paid to him within the next 30 days from the date hereof failing which execution shall be granted to the respondent.

Dated and Delivered at Nairobi this 26th day of April, 2001.

J.E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR