



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: SHAH, J.A (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 264 OF 2000**

BETWEEN

SAMUEL MUGO KARANJA.....APPLICANT

AND

CHIRIRO NDEREBA NJIRI.....RESPONDENT

(An application for extension of time to file Record of Appeal out of time. An appeal from the judgment of the High Court of Kenya in Nairobi(Ransley Commissioner of Assize Esq.) dated 10th May, 2000

in

**H.C.C.C. NOS. 1344 OF 1999
CONSOLIDATED WITH
H.C.C.C. NO. 1405(O.S.)**

R U L I N G

The applicant, Samuel Mugo Karanja, seeks leave to file his record of appeal out of time. The application before me is stated to be brought under rules 4 and 42(2) of the Rules of this Court (the Rules).

On 10th May, 2000 the superior court (Commissioner of Assize P.J. Ransley Esq.) delivered judgment against the applicant whereby a property known as L.R. NO. 36/II/126 was ordered to be transferred to the respondent. The applicant was the registered proprietor of the said property and the respondent was declared to be the owner thereof by virtue of adverse possession. The respondent is in possession of the suit property. Two suits, that is, H.C.C.C. 1344 of 1999 and H.C.C.C. NO. 1405 of 1999 were consolidated and the decree issued encompasses both the said suits.

The applicant's notice of appeal was filed on 15th May, 2000 and served on the respondent's advocate. That was all in good time. The applicant's advocates applied for certified copies of proceedings and judgment by their letter of 18th May, 2000. I will point out, first, that there is no need for certified copies of proceedings and judgment to mount an appeal. The only document that needs to be certified is the order or decree appealed against. Despite this very clear provision advocates normally always apply for certified copies. I do not know why and how this practice has crept in. I would wish to disabuse the advocates of this notion. I hope they will take heed of this warning. I would ask the

"ad(1v)ocDaatiemsa tBoa nkp erLuismei tetdh e & rualniontghse r inv:s. K.H. Osmond (Civil Application

No. Nai. 359 of 2000)(unreported)

(2)Mawji vs. Lalji & 2 others (Civil application No. Nai. 236 of 1992) (unreported)

(3)L.Z. Engineering Construction Limited vs. Trade Bank Limited (In Liquidation) & others (Civil Application No. Nai. 196 of 2000 (unreported))"

Mr. Mutua who appeared for the applicant says that a copy of the letter bespeaking copies of the proceedings and judgment was sent to M/S J. Ngaii Gikonyo & Company, Advocates for the respondent. That letter, dated 18th May, 2000 is, ex facie, copied to the said advocates. Mr. Gikonyo however, denies having received the said copy.

Faced with this situation the applicant applies for extension of time as prayed for. Mr. Mutua says that he realized that if a copy of that letter was not received by Mr. Gikonyo's office, he (Mr. Mutua) does not have the benefit of the proviso to rule 81(1) of the Rules, that is to say, that the time to lodge an appeal expired on 14th July, 2000.

The certified copies of proceedings and judgment were made available to Mr. Mutua on 18th August, 2000. He filed this application on 14th September, 2000 after considering his position in regard to the time factor assuming that the copy of the letter bespeaking copies of proceedings and judgment was not delivered to Mr. Gikonyo's office. It was on or about 5th September, 2000 that Mr. Mutua was informed of the nonreceipt by Mr. Gikonyo's office of a copy of the letter of 18th may, 2000.

On the whole I think Mr. Mutua made the right decision to apply for extension of time rather than lodge a record of appeal based on the fact that the certified copies were made available on 18th August, 2000. I do not think the delay of less than a month in lodging this application is so inordinate as to disentitle the applicant to lodge his appeal.

Mr. Gikonyo conceded, and I think very correctly, that his client will suffer no prejudice if the record of appeal is allowed to be filed out of time, as his client is in possession of the suit land.

Considering all factors advanced before me, also considering the fact that the matter in issue is an adverse possession order and also the fact that the applicant ought not to suffer for the mistakes or inaction of his advocate I allow this application and order that the record of appeal be lodged within the next 30 days. The applicant will however pay the costs of this application to the respondent which costs I assess at Shs.10,000/=. These costs must be paid within the next 30 days failing which execution may issue.

Dated and delivered at Nairobi this 4th day of April, 2001.

A. B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.