

**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 54 OF 2001**

BETWEEN

CRESCENT CONSTRUCTION CO. LTD. APPLICANT

AND

DELPHIS BANK LIMITEDRESPONDENT

**(An application for extension of time to file Notice and
Record of Appeal in an intended appeal from a Ruling
of the High Court of Kenya at Nairobi (Keiwua, J.)
dated 15th December, 1998**

in

H.C.C.C. NO. 4082 OF 1994)

R U L I N G:

It is true the decision sought to be challenged on appeal was delivered on 15th December, 1998 but there is no denying. The fact that Civil Appeal No. 33 of 1999 was actually lodged against the decision. That appeal it is admitted, was struck out by the Court on 19th February, 2001. So there cannot be any question of delay to explain for the period covering 15th December, 1998 and 19th February, 2001. The only delay, if it can be so designated in the period between 21st February, 2001 when the previous appeal was struck out and the 5th March, 2001 when this motion was filed.

In my view that period does not constitute such a delay as would entitle me to deprive the applicant of the exercise of my discretion in its favour. I think I should exercise my discretion in such a way as would give the applicant its undoubted right of appeal. That being my view of the matter, I allow the motion lodged in this Court on 5th March, 2001 and make the following orders:-

- 1.The applicant must lodge its notice of appeal and serve the same on the respondent within seven days of the date hereof.
- 2.The record of appeal must be lodged within fourteen days from the date the notice of appeal is lodged in court.
- 3.The costs of this motion shall be in the intended appeal.
- 4.If the applicant fails to comply with orders numbered one and two herein within the expulated periods, this motion shall stand dismissed with costs shall stand dismissed without further orders of the court.

Dated and delivered at Nairobi this 14th day of June, 2001.

R. S. C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR