



IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: O'KUBASU, J.A (IN CHAMBERS))
CIVIL APPEAL (APPLICATION) NO.192 OF 2000

BETWEEN

CHINA JIANGSU INTERNATIONAL APPELLANT

AND

DUDU HOUSING CO-OPERATIVE SOCIETY LTD RESPONDENT

(Being an appeal from the Ruling and Order of the High
Court of Kenya, Milimani Nairobi (Justice Onyango
Otieno) delivered on the 12th August 1999

in

H.C.Misc. Cause No.54 of 1999)

R U L I N G

This is an application by way of Notice of Motion brought under Rules 4 and 81(1) and (2) of the Court of Appeal Rules. The applicant China Jiangsu International is seeking the following orders:-

"1.THAT the time for filing the Appeal be extended to the 28th July, 2000 so that the record of Appeal may be deemed to be filed within time.

2.THAT the order for leave be included in supplementary record of Appeal to be filed within such time as the court may direct.

3.THAT any illegible documents in the original Record of Appeal should be included on such supplementary record of Appeal.

4.THAT costs of this application be costs in the cause."

This application is brought on the following grounds:-

"1.The delay was occasioned partly in the piecemeal notification of and forwarding of the copies of proceedings to the Applicant's Advocates and partly by an honest mistake in the part of the Applicant's Advocate on the need for certification for the copies of proceedings and ruling.

2.The court has power to exercise discretion and extend time."

In arguing this application Mr. Michuki for the applicant relied on the affidavits of Mr. Gross and Mr.

Gatimu which affidavits set out in great detail the background to the application. Mr. Michuki explained that they made a mistake in computation of time and in so doing they were late by ten days. It should be pointed out that when the original appeal came up for hearing on 12th May 2001 it was discovered that the appeal was filed out of time. In order to rectify that mistake the appeal was taken out of that day's hearing list.

The order of this Court stated inter alia:-

"Consequently in compiling the time for filing the record of appeal we must start from 19th May, 2000. In the result this appeal is out of time. Consequently, we take out this appeal from today's hearing list and stand it over generally. We make no order as to costs."

That order was made on 12th May 2001. Then this application was filed on 28th June, 2001. Mr Michuki has attempted to explain the reason that led to the delay in filing the appeal. We have the two supporting affidavits sworn by Mr. Gross and Mr. Gatimu.

In an application of this nature the Court is being asked to exercise its discretion. It is upon the applicant to explain to the satisfaction of the Court that this discretion should be exercised in its favour.

In **Leo Sila Mutiso v. Rose Hellen Wangari Mwangi** - Civil Application No. NAI. 255 of 1997 (unreported) this Court in dealing with the issue of application for extension of time within which to file and serve Notice of Appeal and Record of Appeal stated inter alia:-

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are first the length of the delay. Secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and, fourthly, the degree of prejudice to the respondent if the application is granted."

Having considered the explanation given and the authorities cited by Mr. Michuki I think I have sufficient material before me to warrant the granting of the orders sought. Hence this application is allowed so that the appeal is deemed to have been filed in time.

I further order that there shall be leave to include Supplementary Record of Appeal to be filed within 14 days from the date of this ruling. It is also ordered that any illegible documents in the original Record of Appeal be included in the Supplementary Record of Appeal. The costs of the application shall be in the intended appeal. Those shall be my orders.

Dated and delivered at Nairobi this 28th day of September, 2001.

E.O. O'KUBASU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR