

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
CORAM: LAKHA, J.A (IN CHAMBERS)
CIVIL APPLICATION NO. 231 OF 2001 (NAK.29/2001)
BETWEEN**

**JAMES MWANDO NGANGA APPLICANT
AND
NJERI NGANGA & 'A'
NJEJRI NGANGA 'B' RESPONDENTS**

**(Application for extension of time to file Record of
Appeal out of time in an intended appeal from the
Judgment & Decree of the High Court of Kenya at
Nakuru (Rimita, J) dated 17th May, 2000
in
NAKURU H.C.SUCCESSION CAUSE NO. 241 OF 1994)

RULING

This is an application under rule 4 of the Rules of this Court for an extension of time to file the record of appeal. The judgment was delivered on 17.5.2000 and the notice of appeal was filed on 24.5.2001. When it was served is in dispute. Assuming, without deciding, that it was served within the prescribed time the proceedings and judgment were delivered to the applicant on 15.2.2000 according to certificate of delay at p.12. There is no explanation of the time taken up between that date and 3 July, 2001. The delay has not been explained. As the letter was not copied to the opposite side Rule 81 cannot assist its applicant. The second letter was not given within 30 days of judgment as required by rule 81.

Where there is no excuse or explanation there can be no indulgence. I do not find any basis on which I can exercise my discretion. Accordingly the application fails and is dismissed with costs.

Made at Nakuru this 27th day of September, 2001.

A.

A.

LAKHA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

