

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
CORAM: KEIWUA J.A (IN CHAMBERS)
CIVIL APPLICATION NO. NAI 23 OF 2001 (NAK 5/2001)

BETWEEN
CHRISTOPHER N. KINUTHIA (as the legal representative of the estate of Kinuthia Gitura
Gikonyo)..... APPLICANT
AND
DAVID K. MUNYUA RESPONDENT

(An application for extension of time within which the intended appellant should serve the notice of appeal and for leave to file a supplementary affidavit)

in
H.C.C.C NO. 275 OF 2000)

R U L I N G

This is an application for extension of time within which to serve a copy of the Notice of appeal on the respondent as required by rule 76(1) of the Court of Appeal Rules. The Notice of appeal was filed in the superior court on November 23, 2000 and signed the same day by the Deputy Registrar. The appellant's clerk says he was instructed to return on 24.11.00 to the superior court's registry to collect stamped copies of the Notice of appeal.

The clerk appears silent as to when he returned to the registry for his copies. He is also silent as to the date he collected those copies from the superior court's registry. The clerk only says he was unable to collect those stamped copies on time and that caused delay in service of the Notice of appeal on the respondent. The respondent has drawn my attention to the fact that the appellant had attached a copy of the filed and signed Notice of appeal to his application for injunction filed on 16.1.2001 in this Court. The appellant has omitted to disclose when those copies of the Notice of appeal were collected. That information would have enabled me to decide whether the applicant is entitled to the exercise of my discretion in his favour. In the absence of any evidence that the file went missing after November 23, 2000 and in the absence of any information by the applicant as to when he collected the stamped and signed Notice of appeal, I am not inclined to grant the applicant leave to serve the Notice of appeal out of time and I therefore dismiss the application with costs.

Dated and delivered at Nakuru this 24th day of September, 2001.

M. OLE KEIWUA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR