



**IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: OMOLO, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI 96 OF 2001 (UR 57/01)**

**BETWEEN**

**MISTRY JADVA PARBAT & CO LTD ..... APPLICANT**

**AND**

**APV HALL EQUATORIAL LTD .....RESPONDENT**

**R U L I N G**

I am asked under **rule 4 of the Court's Rules** to exercise my discretion under that rule and extend the time within which a record of appeal is to be filed.

The decision the applicant intends to appeal against was given on the 5th October, 1999. The applicant applied for certified copies of the proceedings and ruling on the 6th October, 1999, that is, one day after the ruling. Then a notice of appeal was lodged in the High Court on the same 6th October, 1999. Clearly the applicant did all that it was required to do in order to enable it appeal; it even applied to the learned judge of High Court for leave to appeal and the same was granted. Whether that leave was necessary and whether the learned judge had authority to grant it cannot be a matter for me to determine within this application. If the respondent thinks there is no right of appeal and that the judge had no authority to grant leave, I am sure the respondent's counsel will take up that point at an appropriate stage.

The applicant was supplied with the proceedings and ruling on the 13th February, 2001. The certificate of delay issued by the Deputy Registrar of the superior court shows that to be so. So the applicant cannot be penalised for the delay between the 5th October, 1999 when the ruling was rendered and the 13th February, 2001 when the proceedings and the ruling were supplied. In terms of the proviso to rule 81 that period must not be taken into account when computing time.

This motion was filed on the 29th March, 2001. That as a period of over one month from the date the necessary documents were supplied to the applicant. I have taken into account the explanation given for that delay; it is not very convincing but I am not prepared to reject it, particularly in view of the fact that the applicant had previously done everything within the time allowed. Mr Murugara for the respondent says that it was not necessary for the applicant to bring this motion by the 29th March, 2001 because as at that date, the applicant could have filed its appeal without seeking an extension. That may be so, but as Mr Rajinder Billing for the applicant correctly points out, rule 4 gives the court power to extend time either before or after the doing of an act. At any rate, as at now, the applicant cannot file any appeal without time being extended. Taking everything into consideration, I think I should allow this motion. I do so and extend for the applicant the time within which to file its intended appeal by fourteen days from the date hereof. If the appeal is not lodged within the said fourteen days from today, then in that event, the motion shall stand dismissed with costs and without any further orders from the court. The costs of the motion shall be in the intended appeal.

**Dated and delivered at Nairobi this 30th day of October, 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**