



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NYERI**  
**(CORAM: (LAKHA, J.A. (IN CHAMBERS))**  
**CIVIL APPLICATION NO. NAI. 328 OF 2001 (NYR.18/2001)**  
**BETWEEN**

**JOHANA KAMONJO WAHOME ..... APPLICANT**  
**AND**  
**KARIUKI GITHUKU ..... RESPONDENT**

**(Application for extension of time to file and serve a Notice  
of Appeal out of time in an intended appeal from a  
Judgment & Decree of the High Court of Kenya at Nyeri  
(Mr. Justice Juma) dated 9th July, 2001**

**in  
H.C.C.C. NO. 59 OF 1996)**

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**R U L I N G**

This is an application on behalf of the unsuccessful defendant under rule 4 of the Rules of this Court for an extension of time to file a notice of appeal and a record of appeal from a decision of the superior court (Juma, J.) given on 19 July, 2001. Mr. Wachira depones in his supporting affidavit that he forgot to file a notice of appeal.

Assuming, without deciding, that that was so he remembered the omission on 1 August, 2001. But this application for an extension was not filed until 17 September, 2001 about a month and a half later. No notice was filed during this period either. A notice of appeal is a simple formal document; so is this application. I hold that 12 months is an inordinate delay which has not been explained or accounted for in any way. Where there is no excuse or explanation there can be no indulgence.

Having regard to all the circumstances I am satisfied that this is not a fit or proper case for the exercise of my discretion. The application fails and it is accordingly dismissed with costs.

**Made at Nyeri this 29th day of October, 2001.**

**A.A. LAKHA**  
.....  
**JUDGE OF APPEAL**

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