

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: KEIWUA, J.A. (IN CHAMBERS)
CIVIL APPEAL (APPLICATION) NO. 163 OF 2001
BETWEEN

EDWIN OTIENO OCHOLLA
PAA PRODUCTS LIMITED
FISHERMANS PRODUCTS LIMITED APPLICANTS
AND
MADHIR CONSTRUCTION LIMITED 1ST RESPONDENT
EQUATOR BOTTLERS LIMITED 2ND RESPONDENT

**(Application for extension of time to serve Record of
Appeal out of time in an intended Appeal from the
ruling and order of the High Court of Kenya at
Kisumu (Birech, Commissioner of Assize) dated the
6th day of February, 2001
in
H.C.C.C. NO. 181 OF 2000)**

R U L I N G

This is an application for extension of time within which to serve a record of appeal out of time. The decision to be appealed from was delivered on February 6, 2001. The record of appeal was filed on June 7, 2001 and served on the respondent on August 8, 2001 while this application for extension of time was not filed in Court until October 31, 2001. According to rule 87 of the Court of Appeal Rules a copy of a record of appeal must be served on a respondent within seven days after lodgement of the same in Court. This provision has not been observed by the applicant. There is also quite inordinate delay from August 8, 2001 when the record of appeal was purportedly served and the time this application was brought to Court on October 31, 2001.

What is more is that the delay in bringing the application has not at all been explained by the applicant. That failure disentitles an applicant to the exercise of the Court's discretion under rule 4 of the Rules. Accordingly the application to extend time is dismissed with costs.

Dated and delivered at Kisumu this 23rd day of November, 2001.

M.

OLE

KEIWUA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR