

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: KEIWUA, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 129 OF 2000 (KSM. 17/2000)
BETWEEN

JOSEPH MATAFARI SITUMA APPLICANT
AND
NICHOLAS MAKHANU CHERONGO RESPONDENT

**(Application for extension of time to lodge a notice and record of appeal out of time
in an intended appeal from a judgment and decree of the High Court of
Kenya at Bungoma (Ongudi, J) dated the 26th day of March, 1996
in
H.C.C.C. NO. 156 OF 1995)**

R U L I N G

The respondent had on May 2, 2000 applied for extension of time within which to file a notice of appeal from the judgment of the superior court delivered on April 12, 1996. The application came for hearing on June 16, 2000 when it was heard exparte and the present applicant did not know of that fact until February 17, 2001. That is because the applicant alleges the application of May 2, 2000 had not been served on him. The application was served on one Joyun whom the applicant admits to be his step-mother. By his application dated March 16, 2001 the applicant seeks a rehearing of the respondent's application of May 2, 2000 and for the orders made on June 16, 2000 to be set aside.

The respondent opposes the application because the court can proceed with the hearing of an application if a respondent who has been served fails to attend court at the date the application comes for hearing. The hearing notice was on June 6, 2000 served on Wekhulo & co. advocates who were on record appearing for the applicant. The advocates did not attend court on June 16 when the application was to be heard.

Since the advocate or the applicant did not attend court they should have shown that they were prevented from appearing for sufficient cause. I agree with the respondent that the applicant has not even attempted to show what prevented Mr. Wekhulo from attending the hearing of the application on June 16, 2000.

In that circumstance the applicant had 30 days from June 21, 2000 when Mr. Wekhulo indicated that he had had instruction in the matter, to bring an application under rule 55 (4) for rehearing. That application was filed out of time on March 20, 2001.

Accordingly the application is dismissed with costs.

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

M. OLE KEIWUA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR