

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: TUNOI, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 221 OF 2001**

**BETWEEN
KABETE MBUGA APPLICANT
AND
NYAKANGI NYAMACHE RESPONDENT**

**(Application for extension of time to serve Notice of Appeal and lodge
Record of Appeal out of time in an intended appeal from the ruling
and order of the High Court of Kenya at Kisii (Wambilyangah, J.)
dated 15th December, 2000**

**in
H.C.C.S. NO. 84 OF 1996)**

R U L I N G:

The certificate of delay incorporated in this application shows that the proceedings were ready for collection on 4th April, 2001. This certificate has not been challenged as far as its validity is concerned. This being the case, the applicant can find solace in rule 81 of the Rules. Thus his appeal, Civil Appeal No. 77 of 2001 which was lodged on 4th April, 2001 has been filed within the prescribed time.

It would appear, therefore, that this application need not have been filed and is, indeed, misconceived and probably premature. To say the least it was unnecessary. I order it struck out with costs assessed at Shs.1,500/= which should be paid by the applicant to the respondent within 10 days hereof.

Dated and delivered at Kisumu this 19th day of November, 2001.

P.

K.

TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR