



**IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: TUNOI, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI. 259 OF 2001**

**BETWEEN**

**DAVID KIARIE KARUMBO ..... APPLICANT**

**AND**

**KURIA KANYINGI ..... RESPONDENT**

**(Application for extension of time to file and serve a  
notice of appeal and record of appeal out of time in  
an intended appeal from a ruling of the High Court  
of Kenya at Nairobi (Mitey, J.) dated 22nd January,  
1999**

**in**

**H.C.C.C. NO. 4412 OF 1994)**

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**R U L I N G**

This is an application by the applicant, **David Kiarie Karumbo**, under rule 4 of the Rules for extension of time to file a Notice of Appeal and a Record of Appeal. It is apparent that the decision against which the applicant seeks to appeal was given by Mitey, J. on 22nd January, 1999. The applicant lodged an appeal (Civil Appeal No. 275 of 2000), but unfortunately, that was struck out by this Court on 10th July, 2001 as defective because it was lodged out of the prescribed time without the requisite leave.

This application was filed on 27th July, 2001, so in effect it cannot be said that there was inordinate delay in bringing it with a view to resurrecting the desired appeal. However, Mrs. Ndungu, counsel for the respondent, in resisting the application, has strenuously argued that the applicant has been indolent and guilty of laches and has not offered any explanation for the delay in filing this application. Moreover, she averred, the applicant's ignorance of the law in mounting a valid appeal should not be excused. Further, Mrs. Ndungu submitted that if the application is acceded to the respondent's rights would be prejudiced in that the applicant is desirous of continuing to harass him allegedly through the legal process while indeed the applicant holds a personal vendetta against him. It is contended that the intended appeal has political overtures; and also, that the entire process is expensive in terms of costs.

If this is the position then I must sympathise with the respondent. True, no citizen of this country should be dragged through an endless vexatious litigation. But at the moment I cannot and am not required to decide on this. Also, expensive litigation should not be superimposed on an innocent citizen. However, the respondent should take solace that if he wins he will be compensated for in costs at the end of the day. In my view and I so hold, this application has been brought without delay. Further, the applicant has clearly expressed his wish to have the dispute between him and the respondent canvassed in this Court. I do not have any good reason to deny him his undoubted right.

The counsel for the applicant, Hon. Karua, has candidly explained the omissions which resulted in the appeal being struck out and I need not rehash them here.

For the above reasons I have to exercise my discretion in favour of the applicant. Accordingly, I allow the application and extend time for filing the Notice of Appeal by 7 days from to-day and for lodging the Record of Appeal by 21 days from the date of filing the Notice of Appeal. The costs occasioned by this application shall be in the intended appeal in any event.

Dated and delivered at Nairobi this 6th day of December, 2001.

**P. K. TUNOI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**