

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
(Coram: Keiwua, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 366 OF 1999

JOSEPH ERIC OWINO.....APPLICANT

AND

EUNICE ORARE OWINO.....RESPONDENT

(An Application for extension of time to lodge Notice of Appeal and Record of Appeal out of time from the judgment and decree of the High Court of Kenya at Nakuru (Aganyanya, J.) dated 10th August, 1989 in H.C.C.C. NO. 48 OF 1988)

RULING:

This is an application brought under rule 4 of this Court's Rules for extension of time within which to file a record of appeal, the original record having been struck out by the Court on September 21, 1999 on the ground that the decree did not reflect the date of judgment of the superior court. An application for amendment of that decree was filed in the superior court on October 8, 1999 and was heard on October 29, 1999. The delay in not filing the application until October 8, 1999 was explained to be due to the fact that the original record of appeal was not sent from Nakuru to Eldoret, despite verbal request to do so, until October 7, 1999. To my mind the delay between September 21, 1999 and October 7, 1999 has satisfactorily been accounted for.

The delay between October 29, 1999, when the application for amendment of the decree was heard by the superior court, and December 21, 1999 when this application for extension of time was made, is submitted by the respondent to be inordinate in view of the delay involved in Civil Application No. 262 of 1997 (NYR 13/97) NJOGU GACHIANI vs. MBURUGA KIRIA (unreported) and in Civil Application No. NAI. 127 of 1998 FREDRICK J.P. ARODI AND DORCAS JANE ONDITI VS. I.W. WAWERU t/a WATHIOMO SjuALFIAURSI S-m-U-S-E-E --k-O-R-I-R- (-u-n-reported) both of which were relied upon by the applicant. In Civil Application No. 262 of 1997 aforesaid the delay in approaching both the superior court and this court was explained and ruled in favour of the applicant therein by the late Pall J.A. at page 3 of his ruling as follows:-

"On the issue of inordinate delay Mr. Mwangi has explained that on 15th November, 1995, the applicant applied to the superior court for extension of time to file an appeal to this Court against the order of summary dismissal made on 27th April, 1995. There was a delay of about 7 months in that application. H.C.C.C. NO. 48 OF 1988 Then the application was dismissed on 10th July, 1997 and on 30th July, 1997 the applicant filed his present application. This is a land matter.

The respondent will not suffer any irreparable loss if the extension of time is granted and the delay in my view in the circumstances of this case is not so inordinate as to deprive the applicant the opportunity to seek judgment of the highest court in the land."

In Civil Application No. Nai. 127 of 1998 Omolo J.A. at page 3 of his judgment had this to say with reference to inordinate delay:-

"It is clear beyond any doubt that the applicants have always wanted to appeal and the delay between the 25th March and 6th May 1998, though not satisfactorily explained, is not an inordinate one and does not prevent me from exercising my discretion in favour of the applicants. That being my view of the matter, I allow the notice of motion and order that the applicants shall lodge their record of appeal within fourteen days of the date hereof."

The delay in not filing the application until December 21, 1999, though explained to have been due to the time required to compile the record of the notice of motion, though not a satisfactory explanation, still will not debar my discretion being exercised to permit the time extension in view of the trend in the two decisions of this court cited in argument before me. In the result I allow the application and extend the time within which the notice of appeal is to be filed for seven days from the date hereof and serve the same on the respondent within seven days of such filing in court of the Notice of Appeal. The record of appeal may be filed within 30 days of the filing of the notice of appeal. I award costs of the application to the respondent and is payable in any event.

Dated and delivered H.C.C.C. NO. 48 OF 1988 at Nakuru this 25th day of February, 2000.

M. OLE KEIWUA

JUDGE OF APPEAL

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

DEPUTY REGISTRAR