

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Gicheru, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 144 OF 1999

BETWEEN

KENYA COMMERCIAL BANK LIMITED.....APPLICANT

AND

STEPHEN KIRUMBA GERALD.....RESPONDENT

(An application for extension of time for filing Notice of Appeal in an

intended appeal from the ruling of the High Court of Kenya at Nairobi (Kuloba, J.)

dated 24/11/98

in

H.C.C.C. NO. 1738 OF 1985)

RULING:

In this Notice of Motion which was lodged in this Court on 22nd June, 1999 the applicant is seeking extension of time for lodging and serving the Notice of Appeal so that the said Notice of Appeal lodged in the superior court on 16th December, 1998 and served on the respondent on 5th January, 1999 be deemed to have been lodged and served respectively within the extended time. The applicant also seeks extension of time within which to lodge its record of appeal.

The order of the superior court intended to be appealed from was made on 24th November, 1998 and as I have indicated above, the Notice of Appeal was lodged in the superior court on 16th December, 1998 - 8 days outside the prescribed period.

Whereas, however, after discounting the period of the 1998 Christmas Vacation there may have been no delay in the service of the Notice of Appeal upon the respondent on 5th January, 1999, it does not appear from the record of the present application whether or not the proviso to **rule 81(1)** of the Court of Appeal Rules was complied with. This disables me from exercising my discretion under **rule 4** of the said Rules in favour of the applicant as it is uncertain whether the benefits of the aforesaid proviso are available to the applicant: for if they are not, the delay in lodging the intended appeal within the prescribed time remains unexplained. In the result, the applicant's application is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 11th day of February, 2000.

J.E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR