

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

CORAM: AKIWUMI, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI 55 OF 2000

BETWEEN

OSERIAN DEVELOPMENT CO LTD APPLICANT

AND

NORAH MUHONJA MWAVALI RESPONDENT

**(An application for extension of time to file and serve
notice and record of appeal out of time from the
judgment & decree of the High Court of Kenya at
Kisumu (Wambilyangah J) dated 23rd June, 1999
in
H.C.C.C. NO. 253 OF 1996)**

R U L I N G

The present application is to extend time for the filing of the notice of appeal and record of appeal. The decision intended to be appealed against was delivered on 23.6.99. Advocates for the applicant, the intended appellant, informed it of the decision by a letter of 27.6.99 without stating the date when the judgment was given. The intended appellant's instructions to its advocates to appeal was received on 17.7.99 when the time for the filing of the notice of appeal had elapsed. It was pointed out by counsel for the respondent, that it was not till some 8 months thereafter, that is on 28.2.2000, that the present application was filed and that the respondent must not be denied the fruits of her judgment. But certain steps have been taken which give a different complexion to things. Some 3 months after judgment was given, the respondent successfully, by consent of the parties, obtained stay of execution of the judgment which also provided for the payment of 1/3 of the decretal sum to the respondent and 2/3 of the decretal sum to be deposited in an interest bearing account in the joint names of the Advocates of the parties. It does not seem then also, that the delay in filing the notice of appeal had been noticed by either Advocates. This tends to support the submission by counsel for the applicant from the bar, that the discovery that the notice of appeal had been filed out of time was only made in December 1999, when following the grant of stay of execution, the record of appeal was being prepared.

Having regard to all that I have hereinbefore stated, I would, being of the view that it is just having regard to all the surrounding circumstances to do so, grant the application by extending to the applicant 7 days from today within which to file the notice of appeal and 30 days thereafter to file the record of appeal. The costs of this application assessed at 5,000/= to be paid to the respondent within 14 days from today, otherwise execution to issue.

Dated and delivered at Kisumu this 24th day of March, 2000.

A.

M.

AKIWUMI

JUDGE OF APPEAL

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

DEPUTY REGISTRAR