

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

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

CIVIL APPLICATION NO. NAI 44 OF 2000

BETWEEN

HEZRON O. ALOO

MUHORONI SUGAR CO. LTD. APPLICANTS AND

JULIUS OGADA RESPONDENT

**Application for extension of time for lodging a notice
of appeal in an intended appeal from a judgment of
the High Court of Kenya at Kisumu (Wambilyangah J)
dated 8th September, 1999
in
H.C.C.C. NO. 46 OF 1999)**

R U L I N G

This is an application under rule 4 of the Court of Appeal Rules for extension of time to lodge a Notice of Appeal. The decision against which the applicants Hezron Oloo and Muhoroni Sugar Company Ltd wish to appeal was given by Wambilyangah J on 8.9.99.

A Notice of Appeal was filed on 23.9.99 by Joginder Singh Bahan & Company Advocates on behalf of the applicants. This was one day late as the last day under rule 74 (2) of the Rules of this Court was 22.9.99. Mr Okero, for the applicants, has sworn an affidavit in support of the application and he has deposed that on 22.9.99 he prepared a Notice of Appeal and gave it to his clerk one William Andiego Ralak to file in the superior court. Ralak did not file the Notice of Appeal on 22.9.99 as directed by Mr Okero, but he did so the following day. He has confirmed this in his own affidavit sworn on 26.1.2000. Mr Okero freely accepts responsibility for this lapse as the Advocate for the applicants.

Although Ralak did not file the document on the day he was instructed to do so, he did not report to Mr Okero that he had done so a day later with the result that Mr Okero only discovered what had happened later when he was preparing the Record of Appeal.

Mr Odunga, for the respondent, opposes the application and says that I should decline to exercise my discretion in favour of the applicants because Mr Okero has not accounted for the delay from 23.9.99, when the Notice of Appeal was filed, and 26.1.2000 when this Notice of Motion was filed. Mr Okero has said on oath that he only discovered the error when he was preparing the Record of Appeal although he did not give any particular date. I think that is a perfectly reasonable explanation and I accept it.

Accordingly I allow this application and extend the time for lodging the Notice of Appeal by one day, with the result that the Notice of Appeal filed on 23.9.99, is deemed to have been filed in time. The respondent will have the costs of this application assessed at Shs.4,000/= to be paid within 14 days and in default execution to issue.

Dated and delivered at Kisumu this 22nd day of March, 2000.

R.

O.

KWACH

JUDGE OF APPEAL

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

DEPUTY REGISTRAR