



REPUBLIC OF KENYA
IN THE COURT OF APPEAL

AT KISUMU

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

CIVIL APPLICATION NO. NAI 264 OF 1999

BETWEEN

JOHN MASITSA APPLICANT

AND

JONATHAN C. SONGO RESPONDENT

**(Application for extension of time from the ruling of the
High Court of Kenya at Kakamega (Tanui J) dated 28th
April, 1999**

in

KAK. H.C.C.C. NO. 67 OF 1998)

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 and a Record of Appeal.

The decision against which the applicant wishes to appeal was given by Tanui K on 28.4.99. It was made in an application made by the applicant for review. The reason given by the applicant for not lodging a notice of appeal in time is that he was not present in court when the learned Judge delivered his ruling on 28.4.99. That may be so but both he (applicant) and his Advocate were present on 11.4.99 when the application was heard and the Judge reserved his ruling until 28.4.99. So, both the applicant and his

Advocate had knowledge of the date of delivery of the ruling. They chose not to attend on 28.4.99 to take the ruling. The applicant cannot now turn round and plead ignorance. I refuse to exercise my discretion in favour of the applicant and dismiss his application with costs to the respondent.

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

J O. KWACH

JUDGE OF APPEAL

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

DEPUTY REGISTRAR