

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT KISUMU

(AKIWUMI, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NAI 165 OF 1999 (KSM.14/99)

BETWEEN

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(AKIWUMI, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NAI 165 OF 1999 (KSM.14/99)

BETWEEN

SARAH HERSI ALI APPLICANT

AND

KENYA COMMERCIAL BANK LTDRESPONDENT

(An application for extension of time to file notice and record of appeal out of time in an intended appeal from the judgment of the High Court of Kenya at Bungoma dated 23rd June, 1997 (Justice C. Ongudi)

in

H.C.C.A. No.84 of 1996

RULING

It is not disputed that the applicant was only one day out of time in filing her Notice of Appeal and because of this purely technical ground, her appeal was struck out on 18.6.99.

She expeditiously applied on 30.6.99 for extension of time to file a Notice of Appeal. Her quick action has also not been criticised. What has been the objection to her present application is rather that the affidavit in support of her application, had annexed to it annexures which contrary to the mandatory provisions of Rule 9 of the Rules made under S.6 of the Oaths and Statutory Declaration Act, provides that all exhibits to affidavits shall be securely sealed thereto under the seal of the "Commissioner" as opposed to the phrase "Commissioner for Oaths" which has been consistently employed through out the Act and the rules made thereunder. But this will be too technical a point to insist on. Apart from the fact that in my experience the provisions of Rule 9 have not been applied at all, the affidavit itself, without the annexures, establishes that the delay in filing the Notice of Appeal was only one day. Furthermore, these allegations have not been denied by any of the replying affidavits filed by the Respondent. Rules are handmaidens of this Court but we must be careful that handmaidens do not become harsh mistresses.

In my view, having regard to what I have herein before said, the peculiar surrounding circumstances of this case, the need not to deny the applicant his undoubted right of appeal, I would exercise my unfettered

discretion and order that the Applicant files her Notice of Appeal within the next 7 days and the Record of Appeal within 30 days thereafter. There will be no order as to costs.

Dated and delivered at Kisumu this 20th day of March, 2000.

A.M. AKIWUMI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR