

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(Coram: Gicheru, J.A. (IN CHAMBERS))
CIVIL APPLICATION. NAI. 96 OF 1999
BETWEEN**

**SAMUEL KIBE.....APPLICANT
AND
1. BENSON MURIGI NJUGUNA.....1ST RESPONDENT
2. JOHN KAMUNYU MURIGI.....2ND RESPONDENT**

**(An application for extension of time to file and Serve
Notice and Record of Appeal from a judgment and decree of
the High Court of Kenya at Nairobi (Mbogholi -Msagha, J.)
dated 26/3/98**

**in
H.C.C.A. NO. 22 OF 1996)

RULING:

In this application, the applicant seeks extension of time within which to lodge and serve the record of appeal. The decree intended to be appealed from was given by the superior court on 26th March, 1998 and on 4th April, 1998 the applicant who was then acting in person applied for certified copies of the proceedings and judgment of the superior court.

That application was in writing and was made within the prescribed period. A copy of the same was, however, not sent to the respondents. Hence, in terms of rule 81(2) of the Court of Appeal Rules, hereinafter called the Rules, the proviso to sub-rule (1) of the aforesaid rule was not available to the applicant. From the date of lodging the Notice of Appeal on 6th April, 1998 to 26th April, 1999 when the present application was made, a period of 385 days had elapsed.

From the supporting affidavits to the applicant's application, it would seem that the reason for the delay in lodging the record of appeal was the late receipt of the certified copies of the proceedings, judgment and decree from the superior court. That explanation is of no consequence as sub-rule (2) of rule 81 of the Rules was not complied with. From the date of lodging the Notice of Appeal - 6th April, 1998 - the applicant had 60 days within which to lodge the record of appeal in this Court. Beyond that period, the subsequent delay of 325 days in lodging the said record remains unexplained. That is no mean delay. Consequently, I am unable to exercise my discretion under rule 4 of the Rules in favour of the applicant. I therefore dismiss the applicant's application with costs to the respondents.

Dated and delivered at Nairobi this 3rd day of March, 2000.

J.E. GICHERU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR