

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: GICHERU, LAKHA & O'KUBASU JJ.A.
CIVIL APPLICATION NO. NAI. 219 OF 1999

MIGWANI FAMILY HELPERS PROJECTAPPLICANT
AND
HAMIDAS BOUTIQUERESPONDENT

(Being an application for extension of time to lodge and
serve Notice of Appeal and a record of appeal from
the judgment of the High Court of Kenya at Machakos
(Mr. Justice Alex G.A. Etyang) dated 15th July, 1998

in

H.C.C.A NO. 91 OF 1996

DRAFT RULING OF THE COURT

This is a reference to this Court by the applicant who is dissatisfied with the Ruling of a single Judge of this Court (Shah J.A.) delivered on 11th November, 1999, dismissing the Applicant's Notice of Motion dated 28th July, 1999 for the extension of time to file a Notice of Appeal and Record of Appeal out of time.

The learned single Judge considered the facts leading to the application before him and having done so stated inter alia:-

"I am not satisfied that the 49 days delay caused on account of obtaining instructions is excusable. Nor am I satisfied that the 33 days delay in lodging the application after obtaining instructions in the circumstances of this case is reasonably explained".

Arising from the above, the learned single Judge was of the view that the circumstances of the case did not persuade him to exercise his unfettered discretion to extend time and hence dismissed the application.

Mr. Musyoki for the applicant made some attempts to explain the delay in taking appropriate steps but when we asked him to show us where the learned single Judge went wrong to exercising his discretion, he failed to do so. We have carefully considered the circumstances leading to this application and having regard to what the learned single Judge stated, we are unable to find fault with his reasoning.

We think the learned single Judge was right in refusing to exercise his discretion in favour of the applicant. There were obvious delay which the applicant totally failed to account for before the learned single Judge. The learned single Judge took all these matters into account before exercising his discretion against the applicant. We have not been convinced that the Judge exercised his discretion wrongly. That being on view of the matter this reference fails and we order that it be and is hereby dismissed with costs to the respondent.

Dated and delivered at Nairobi this 10th day of March, 2000.

J.E. GICHERU .

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

E. O. O'KUBASU

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JUDGE OF APPEAL