



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: BOSIRE, J.A.(IN CHAMBERS))
CIVIL APPLICATION NO. NAI.146 OF 1998

BETWEEN

SATISH DAVDRA IST APPLICANT

KANTADHIRJ KANTILAL 2ND APPLICANT

AND

JAYANTILAL ARJAN DAVDRA IST RESPONDENT

DAMJI ARJAN DAVDRA 2ND RESPONDENT

NATVERLAL ARJAN DAVDRA 3RD RESPONDENT

(An intended Appeal from the ruling of the High Court of
Kenya at Nairobi given at Nairobi on the 24th July,
1996 by (Justice Ringera)

in
H.C.C.C. No.1478 of 1994)

RULING

The applicants who are the defendants in Nairobi High Court Civil Case No.1478 of 1994 were aggrieved by the order of that court made on 24th July, 1996, and promptly filed a notice of appeal declaring their intention to appeal against the said order. They also promptly applied for copies of proceedings and the ruling against which an appeal is intended. In this application, under rule 4 of the Rules of this Court for an order extending the time within which to file and serve a notice of appeal and thereafter a record of appeal, the applicants contend that there was delay in furnishing them with the copies of proceedings and ruling. The applicants having timeously filed a notice of appeal, it is not clear why they again seek an extension of time within which to file a fresh notice. Be that as it may, the application is opposed and to my mind quite properly.

The copy of the draft certificate of delay on record clearly states that the time which was necessary for preparing and delivering copies of proceedings and the ruling against which an appeal intended was up to 3rd November, 1997. So that by say 4th November, 1997, the applicants had in their possession all the essential documents for lodging their appeal. They contend that for some time the file of the superior court went missing and as a result they could not file a certificate of delay. It would appear from the

affidvit of Satish Chandra Kantilal Arjan Davdra, that even as of today the file is still missing. It is also their case that they have had several problems obtaining the essential documents. I do not, however, think that the applicants are being particularly candid in this matter. Their counsel prepared the draft certificate of delay on record, and in it they state that by 3rd November, 1997 they had received all the necessary copies of proceedings and ruling. It should not, therefore, lie in their mouths to make an about face and say that they could not lodge their appeal timeously because of delay in receiving the same. Apart from the period which was certified as necessary for preparing and delivering the copies, the applicants had in addition, the Christmas vacation which by dint of the provisions of rule 3(e) of the Rules of this Court, is excluded from computation of time within which to lodge and serve their appeal but they failed to do so . Nor did they promptly bring this application. No explanation has been offered for the delay. Besides the applicants have not explained why this application which is dated 5th June, 1998, was not filed in court until 16th June, 1998.

Besides, the applicants' complaint that there was delay by the court in supplying them with the certified order against which an appeal is intended is without justification.

By the rules of practice it is the duty of the party who intends to appeal against a decree or order to draw the same and cause it to be certified. If there was any delay in furnishing a copy of the order the applicants or their counsel are partly or wholly to blame for it. They have not exonerated themselves from blame and cannot therefore properly rely on the delay for seeking the discretion of this Court in their favour.

In the foregoing circumstances I decline to exercise my unfettered judicial discretion under rule 4 aforementioned to extend the time within which to file and serve a notice and record of appeal, and dismiss the applicants' application with costs.

Dated and delivered this 9th day of March, 2000.

S.E.O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR