

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
(CORAM: SHAH, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 369 OF 1999 (NYR. 24/99)

BETWEEN

DORCAS KANONGO APPLICANT
AND
KENYA COMMERCIAL BANK LTD. 1ST RESPONDENT
JULIUS KIAMBATI MARETE 2ND RESPONDENT
KABITI M'KIRERA MUNGANIA..... 3RD
RESPONDENT

**(Application for extension of time to lodge and serve the
Notice of Appeal and Record of Appeal in an intended
appeal from the Judgment of the High Court of Kenya at
Meru (Justice Etyang) dated 14th January, 1998**

**in
H.C.C.C. NO. 79 OF 1984)**

RULING

I have, before me, an application brought by a notice of motion. It does not say what rule of the Rules of this Court is invoked to base the application but I would assume it is brought under rule 4. The applicant seeks extension of time to lodge a notice of appeal and record of appeal, afresh, out of time as a result of her first appeal to this Court having been struck out on 14th May, 1999, as one of the affected parties (the second respondent) was not served with either the notice of appeal or the record of appeal.

Miss Mukuha who appeared for the applicant says that in addition to the lapse on the part of the applicant in not serving the notice of appeal on the second respondent, she noticed that an exhibit (copies of proceedings and judgment in Meru H.C.C.C. NO. 80 of 1984) was not included in the struck out record of appeal. So she set out to apply for and obtain those copies which were supplied to her on 17th September, 1999.

The affidavit filed in support of the application makes no reference to any reason why the application was not lodged soon after 17th September, 1999.

Miss Mukuha informed me, from the Bar, that the delay (which amounts to 93 days) was as a result of communication difficulties with her client who is in Meru District and for lack of funds on part of the applicant. Miss Mukuha conceded that for the purposes of lodging this application she did not need the copies of proceedings and judgment in Meru H.C.C.C. NO. 80 of 1984. Yet she waited for those.

It does not take too much money to lodge an application such as the one before me. I am not satisfied that the 93 day delay which I have alluded to has been properly explained.

I know I have almost unlimited jurisdiction to extend time on a rule 4 application; but such jurisdiction can only be exercised judiciously. I must also look at the interests of all parties concerned. Where there is unexplained delay or if unacceptable reasons are advanced for such an inordinate delay I cannot exercise my discretion to extend time as sought here.

There are other reasons why this application ought to fail. The third respondent admittedly is a purchaser, at an auction sale, for value, of the parcel of land which is being litigated upon. In such a case to vex him with continuous proceedings would not only be inequitable but also burdensome.

If the applicant had any proper cause of action it would have been for damages against the first and the second respondents. No such damages were claimed in the suit. It would be too late now (after some 16 years) to mount a claim for damages.

It is a cardinal principle of our system of law that litigation ought to come to an end.

Considering all these circumstances I am unwilling to exercise my discretion to extend time as sought. This application is dismissed with costs.

Dated and delivered at Nyeri this 19th day of May, 2000.

A.B. SHAH

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JUDGE OF APPEAL

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