

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(CORAM: GICHERU, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 365 OF 1999 (NYR. 22/99)

BETWEEN

KENYA BREWERIES LIMITED APPLICANT

AND

DANIEL KIERE KIMUNYI RESPONDENT

(Application for extension of the validity of the Notice of Appeal and extension of time to lodge and serve the Record of Appeal out of time in an intended appeal from the Judgment of the High Court of Kenya at Nyeri (Justice Osiemo) dated 7th December, 1998

in

H.C.C.C. NO. 30 OF 1996)

R U L I N G:

According to Counsel for the applicant, Mr. Lutta, in **Civil Application NO. NAI. 49 of 1999 (NYR 4/99)**, the applicant had sought extension of time within which to lodge and serve the Notice of Appeal. In granting that application on 13th May, 1999 the single judge of this Court also ordered that the record of appeal be lodged within 21 days of lodging the Notice of Appeal within the extended time. This latter order had not been sought by the applicant since as at the date of granting the extension of time within which to lodge the Notice of Appeal it had not obtained the proceedings of the superior court. Indeed, according to the applicant, it received the said proceedings on 3rd November, 1999 and made the present application on 30th November, 1999 having not obtained a certificate of delay so as to avail itself the benefits of the proviso to **rule 81 of the Court of Appeal Rules**, hereinafter called the Rules. Had the applicant availed itself the benefits of the proviso to the aforesaid rule, as at the date of making this application, it still would have had 33 days within which to lodge the record of appeal and thereby making this application unnecessary if the said record was lodged within the 33 days. Notwithstanding this lapse, however, as the order of the single judge of this Court requiring the applicant to lodge the record of appeal within 21 days of lodging the Notice of Appeal as is mentioned above had not been sought by the applicant in its application for extension of time within which to lodge and serve the Notice of Appeal, I would in the circumstances exercise my discretion under **rule 4** of the Rules in favour of the applicant so that the time for lodging its record of appeal is extended by 21 days from the date hereof but as the applicant did not avail itself the benefits of the proviso to **rule 81** of the Rules, the costs occasioned by this application assessed at K.Shs.3,000/= are awarded to the respondent.

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

J.E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR