



REPUBLIC OF KENYA

**IN THE COURT OF APPEAL
AT NYERI**

CORAM: OMOLO, SHAH & BOSIRE, JJ.A.

**CIVIL APPLICATION NO. NAI.153 OF 1999
BETWEEN**

BENSON M'NGUTHURI.....APPLICANT

AND

FRANCIS MUCHIRI.....RESPONDENT

**(An application for extension of time and for leave to lodge notice of appeal
and record of appeal out of time in an intended appeal from the Ruling of the
High Court of Kenya at Meru (Etyang, J) dated 31st July, 1998**

in

H.C.C.A. NO. 40 OF 1996)

RULING OF THE COURT

This is a reference from the decision of a single Judge, Ole Keiwua JA, in which he declined to exercise his discretion under rule 4 of the Court of Appeal Rules, to extend the time within which to file and serve a notice of appeal and thereafter the record of appeal, against the decision of the superior court (Etyang, J) in its *Civil Case No. 40 of 1996*. The learned single Judge considered the application fully and assigned reasons, which we agree with for dismissing the application. Mr. Kariuki for the applicant having reconsidered the reference by his client to the full court now applies for leave to withdraw the application. We think that apart from the fact that in our view the reference lacks merits, there is no provision in our rules for withdrawing references or applications made to this Court. In the circumstances, the order which commends itself to us is to dismiss the reference but make no order as to costs as the respondent did not attend the hearing of the reference though served.

Dated and delivered at Nyeri this 26th day of October, 2000

R.S.C. OMOLO

JUDGE OF APPEAL

A.B. SHAH

JUDGE OF APPEAL

S.E.O. BOSIRE

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

REPUBLIC OF KENYA

**IN THE COURT OF APPEAL
AT NYERI**

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

CIVIL APPLICATION NO. NAI. 153 OF 1999(NYR.13/99)

BETWEEN

BENSON M'NGUTHURI APPLICANT

AND

FRANCIS MUCHIRI RESPONDENT

**(In the matter of an application for extension of time and for leave to lodge
Notice of Appeal and Record of Appeal out of time in an intended appeal from the**

Ruling of the High Court of Kenya at Meru (Hon. Justice Etyang) dated 31st

July, 1998

in

H.C.C.A NO. 40 OF 1996)

R U L I N G

In this application for leave to lodge the Notice of Appeal and Record of Appeal out of time, the ruling against which the applicant seeks to challenge was delivered on July 31, 1998 but the application for enlargement of time was not filed in Court until June 14, 1999 which by any standards along period of time which delay the applicant would wish to blame on his previous advocates. In my judgment the inordinate delay is fatal to the application and that is more the position in the absence of any satisfactory

explanation of what steps the applicant himself took to see to it that his right of appeal is not jeopardised by the inaction on the part of his then Counsel.

There is yet another hurdle to the success of the application namely the fact that the same application has never been served to date on the respondent. Though time within which the application for leave is not specified under our rules, this Court in the case of *L. Z. Engineering & Another vs Trade Bank & Another Civil Application No. 282 of 1999* held that an application for enlargement of time must be served on the respondent within a reasonable time which in that case was 25 days which was found to be not reasonable. Similarly, in this application a period of close to 12 months cannot by any stretch of imagination be regarded as reasonable and I accordingly dismiss the application with costs to the respondent.

Dated and delivered this 17th day of May, 2000.

M. KEIWUA

JUDGE OF APPEAL

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

DEPUTY REGISTRAR