



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: OWUOR, J.A (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI. 310 OF 1999**

**BETWEEN**

**1. ICERBERG REFRIGERATION LTD.**

**2. GULIANO CARPAGNANO ) .....APPLICANTS**

**3. JOHN GATHU NG'ANG'A )**

**AND**

**FIDELITY COMMERCIAL BANK LIMITED .....RESPONDENT**

**(Application for extension of time to file an appeal out  
of time from the ruling and order of the High Court  
of Kenya at Nairobi (M/s Gacheche, Commissioner of  
Assize) dated 28th June, 1999**

**in**

**H.C.C.C NO. 215 OF 1998)**

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**RULING**

This is an application brought under rule 4 of the Court of Appeal Rules for extension of time to file a record of appeal. The decision against which Guliano Carpagnano (the applicant) wishes to appeal was given by Commissioner of Assize, Gacheche on 28th June, 1999. She dismissed an application by the applicant for stay of execution and setting aside an ex-parte judgment. The applicant filed a Notice of appeal on 12th July, 1999 within the time limited by the Rules of the Court of Appeal. This application for copies of proceedings and judgment (sic) was made to the superior court on the same day, 12th July, 1999 and a copy of the letter sent to the respondent's advocates. According to the Certificate of Delay issued by the Deputy Registrar of the superior court dated 28th October, 1999, the time required for preparation and delivery of certified copies of proceedings and ruling was from 30th June, 1999 to 28th September, 1999, a period of 91 days. This means that for the purpose of the proviso to rule 81(1) of the Court of Appeal Rules, which was applicable to the applicant, he had 60 days from 28th September, 1999 to file his appeal, that is to say on or before 28th November, 1999. But instead of filing the appeal for some strange reason his advocates decided to take out this Notice of motion on 8th November, 1999, some 20 days before the time allowed by the rules for lodging the record of appeal expired. To my mind this must have been due to ignorance of the Rules of this Court.

Anyway, whatever the reason for what happened, the situation as it stands now is that the time for filing

the appeal has passed and this application can no longer be considered as premature.

The applicant has clearly demonstrated his wish to appeal against the decision of the superior court and the only reason he has not done so is a misapprehension of the Rules on the part of his advocates for which he should not be penalised. I think the mistake was genuine and such mistakes do occur from time to time. Mtro. tiGmaet.uru, for the respondent, submitted that the application had no merit and urged me to dismiss it. In view of what I have said, I am inclined to exercise my unfettered discretion in favour of the applicant. Consequently, I allow the application and extend the time for lodging the record of appeal by 14 days from today's date. The respondent will have the costs of this application.

Dated and delivered at Nairobi this 23rd day of June, 2000.

**E. OWUOR**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**