



**IN THE COURT OF APPEAL**

**AT NAIROBI**

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

**CIVIL APPLICATION NO. 1 OF 2000**

**BETWEEN**

**EAST AFRICA TELEVISIONS NETWORK LTD.....APPLICANT**

**AND**

**COMMUNICATIONS COMMISSION OF KENYA .....RESPONDENT**

**(An application for the extension of time to lodge and serve a notice of appeal and lodge the record of appeal out of time against the ruling of the High Court of Kenya at Nairobi (Justice Githinji) dated the 16<sup>th</sup> day of November 1998**

**in**

**Misc Civil Application No 400 of 1998)**

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**RULING**

The applicant East Africa Television Network Limited, has moved this Court under rule 4 of the Court of Appeal Rules, for an order extending the time within which to file and serve a fresh notice of appeal, and to lodge and serve a record of appeal, against the decision of the superior court, in its Misc Civil application No 400 of 1998.

The applicant's Civil Appeal No 24 of 1999, against the aforesaid decision was struck out for being incompetent, on 19th November, 1999, on the grounds, firstly, that the order appealed against was not drawn in accordance with the provisions of the Civil Procedure Rules and, secondly, that the order cited a judge other than the one who made it. As the applicant was still desirous of challenging the superior court decision on appeal, it, on 5th January, 2000, brought the present application. Mr Kimani, for the applicant, who swore the affidavit in support of the application deposes in it that the delay of about five weeks in bringing this application was occasioned by his endeavour to regularize the defects in the order intended to be appealed against, and he prayed that I exercise my unfettered judicial discretion in the applicant's favour.

It is now well settled that a litigant whose appeal has been struck out may restart the appellate processes by moving this Court for an order extending the time within which to file and serve a notice and record of appeal, provided that the application is brought promptly and there are no factors or circumstances which will work against him to deny him the extension. The applicant in the matter before me cannot be said to have unduly delayed in bringing this application. That is the more so when one considers that it was necessary to correct the defect in the order against which an appeal is intended, and because, as a general rule, the period of the Christmas vacation is excluded from computation of time. Besides, the respondent's counsel does not seem to have any reasonable grounds for opposing the extension of time sought.

In the result I allow the application and extend the time within which to file and serve a Notice of Appeal

by 10 days from the date hereof and a further 30 days within which to lodge and serve the memorandum and record of appeal. Costs of the application to the respondent.

**Dated and delivered at Nairobi this 15th day of June, 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**