

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: KWACH, J.A (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 150 OF 2000
BETWEEN
H.Z. & COMPANY LIMITED APPLICANT
AND
SAMUEL M. NJARIA RESPONDENT**

R U L I N G

This is an application under rule 4 of the Court of Appeal Rules for extension of time to file a Notice of Appeal and Record of Appeal. The decision against which H.Z. & Company Ltd. the applicant wishes to appeal was given by Wambilyangah, J on 16.6.98. The applicant filed an appeal against that decision (CA No. 239 of 1998) but this was struck out as incompetent on 22.3.2000 as the Record of Appeal did not contain some of the exhibits tendered in evidence at the trial. Since these exhibits were said to have been lost, the applicant was obliged to obtain a certificate of loss signed by the Deputy Registrar of the superior court before it could mount a competent appeal. This certificate was issued on 7th April, 2000 though Mr. Kasamani does not say in his affidavit when he received it. Mr. Kowino, for the respondent, opposes this application on the ground that Mr. Kasamani has not explained the delay between the date the certificate of loss was issued and 26.4.2000 when the Notice of Motion was filed. In the circumstances of this case, I do not regard a delay of 19 days as inordinate. I accordingly grant the application and extend the time for filing a Notice of Appeal by 7 days from today and for filing the Record of Appeal by 14 days from the date of filing the Notice of Appeal. The respondent will have the costs of this application assessed at Shs 10,000/= to be paid within 7 days and in default execution to issue.

Dated and delivered at Kisumu this 12th day of June, 2000.

R. O. KWACH

JUDGE OF APPEAL