

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OWUOR, J.A (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 64 OF 2000
BETWEEN**

**GEOFFREY ORAO OBURA APPLICANT
AND
MARTHA KARAMBU KOOME RESPONDENT**

**(Being an application for extension of time to file a
Notice of appeal and record of appeal in an intended
appeal from the judgment of the High Court of Kenya
at Nairobi (Mr. Justice Keiwua) dated 30th September, 1998**

**in
H.C.C.C No. 473 of 1998 (OS)**

R U L I N G

This is an application under rule 4 of the Court of Appeal rules (the Rules) brought by Geoffrey Orao Obura (the applicant) seeking the following orders:- "1.That the time for filing the Notice of appeal be extended.

2.That the time for lodging the record of appeal be extended.

3.Such further orders to meet the ends of justice as may be deemed necessary be made. 4.That the costs of the application abide the result of the appeal".

The grounds upon which the above orders are sought are that the record of appeal earlier filed had an error due to inadvertence by the High Court Registry. Further that the applicant is convinced that he has a strong appeal to canvass before this Court. I am not concerned in this application with the second ground.

On 17th day of January, 2000 this Court struck out the applicant's Civil Appeal No. 275 of 1998 for being incompetent. It had breached the provisions of order XX rule 7(1) of the Civil Procedure Rules. In that the copy of the extracted order showed a different date, 1st October, 1999 while the order appealed from was given on 30th September, 1999. According to counsel for the applicant, on the same day he requested the registry at Milimani Commercial Courts to correct the order and it was corrected on 7th February, 2000 and therefore ready for collection. This application for extension of time was not filed till the 2nd of March, 2000. Mr. Khamati states that he could not file the application immediately after the striking out of the appeal because he was waiting for the corrected order. Counsel for the respondent has opposed the application on the ground that the applicant must be found guilty of an inordinate and unreasonable delay of about two months from the time the appeal was struck out and the time this application was filed. Mr. Khamati denies that there was a delay. The reason he gives for the delay is that the corrected order was wrongly given to the firm of Martha Koome & Co. Advocate on or about 7th February, 2000 and was later passed on and received in his chambers on 15th February, 2000.

Mrs. Koome's story and as supported by her clerk who was given the order at the Registry and handed it over to Mr. Khamati's clerk is that the same was handed over on 9th February, 2000 and not 15th February, 2000 as claimed by Mr. Khamati. The variation in the story as to when the corrected order left Mrs Koome's chambers to Mr. Khamati's chambers is itself indicative of the confusion that had been caused at the High Court registry. If care had been taken, Khamati & Company advocate's document should not have been handed over to Martha Koome & Co. Advocates. In exercising my discretion as to whether or not I should extend time for the applicant, I am of the view that the main delay in the filing of the application cannot be entirely attributed to the inactivity of the applicant's counsel. Nor is a delay of

three weeks or two weeks in the circumstances of this matter inordinate. I am of the view that the applicant has provided me with a perfectly reasonable explanation to warrant my extending the time as he requests accordingly allow the application and extend the time for lodging the Notice of appeal by 7 days from today's date and thereafter the record of appeal to be lodged within 15 days from the date of filing the Notice of appeal. The respondent will have the costs of this application.

Dated and delivered at Nairobi this 7th 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