

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: AKIWUMI, TUNOI & O'KUBASU, J.J.A.
CIVIL APPLICATION NO. NAI 63 OF 2000
BETWEEN

JAYANTKUMAR VRAJLAL SHAH
MRS SHIKSHA DEVI DASAPPLICANTS
AND
MIDCO HOLDINGS LIMITED
SUMMIT TEXTILES LIMITEDRESPONDENTS

**(An application to file notice of appeal out of time in
an intended appeal from the ruling of the High Court
of Kenya at Nairobi (Mulwa J) dated 2nd February,
1999**

**in
H.C.C.C. NO. 51 OF 1998)**

RULING OF THE COURT

This is a reference from the decision of the learned single Judge of this Court (Owuor, JA), given on 2nd May, 2000 by which she dismissed the applicants' application for the extension of time to file a Notice of Appeal and Record of Appeal out of time.

The learned single Judge found that the delay in filing the Notice of Appeal was only two days, the reason for the delay being given as the illness of Mr Hira, counsel for the applicants a fact which was accepted by both the learned single Judge and counsel for the respondents.

We think that the learned single Judge was obviously wrong in refusing to exercise her discretion in favour of the applicants in view of the fact that the so-called delay only amounted to two days which the applicants' counsel satisfactorily explained before her. Moreover, the novel principle advanced by her that:

"When an order of this Court is not complied with, it does not matter if it is for one day or one year, if there is no sufficient explanation for the delay."

is not only wrong but is misplaced as it works out injustice to the parties to litigation.

The learned single Judge exercised her discretion wrongly and erred in principle. The reference succeeds and is allowed. The Notice of Appeal filed on 3rd February, 2000 and the Record of Appeal filed on 16th February, 2000 shall be deemed to be properly lodged in Court. The costs of this reference shall be costs in the appeal.

Dated and delivered at Nairobi this 6th day of June, 2000.

A. M. AKIWUMI ----- JUDGE OF APPEAL

P. K. TUNOI

JUDGE OF APPEAL

E. O. O'KUBASU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR