

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT MOMBASA

CORAM: O'KUBASU, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 146 OF 2000

BETWEEN

JUMA MOHAMMED TUWANO APPLICANT

AND

1. MOHAMMED HAMISI MWABWAGIZO

2. SALIM HAMISI MWABWAGIZO

3. MASUNI MWACHIBUKO MWABWAGIZO

4. SALIM ABDULRAHIMAN MWABWAGIZO RESPONDENTS

**An application for extension of time to file and serverecord of appeal in an intended appeal from
ajudgment of the High Court of Kenya at Mombasa**

(Waki, J.) dated 7th December, 1998

in

H.C.C.C. NO. 1 OF 1991)

R U L I N G

This is an application by way of Notice of Motion brought under Rules 3 and 4 of the Court of Appeal Rules in which the applicant is seeking the following orders:-

"1.THAT the time limited for filing the Record of Appeal be extended. 2.THAT the Record of Appeal be filed within such extended time. 3.THAT the costs of and incidentals to this application abide the result of the said appeal."

Mr. Gathuku who appeared for the applicant gave a brief background to this application which in his view ought to be granted as the applicant fell sick and hence was not in a position to give instructions in good time. Mr. Ngibuini for the respondent opposed the application on the ground that it did not only lack merit but was not brought in compliance with Rule 42(1) of the Rules of this court which states:-

"Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, all applications to the Court shall be by motion, which shall state the grounds of the application." I think this application can be disposed of without considering the explanation given for the delay. I appreciate that the applicant was sick but the application must be brought in accordance with the rules of this court. The rules clearly state that the applicant shall state the grounds upon which the application is brought.

Here even Mr. Gathuku conceded that no such grounds were stated. Hence, the application is incompetent. Consequently, I have no alternative but to strike it out with costs. Those will be my orders.

Dated and delivered at Mombasa this 28th day of July, 2000.

E. O. O'KUBASU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR