



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

CORAM: SHAH, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI 179 OF 2000 (UR 80/00)

BETWEEN

JOHN KIRAGU MWANGI ..... APPLICANT

AND

NDEGWA WAIGWA ..... RESPONDENT

(An application for extension of time to file record of  
appeal out of time in an intended appeal from a  
judgment of the High Court of Kenya at Nyeri (Juma  
J) dated 10th December, 1999

in

H.C.C.C. NO. 76 OF 1996)

\*\*\*\*\*

**R U L I N G**

The applicant seeks extension of time to lodge a record of appeal under **rule 4 of the Rules of this Court**. The intended appeal is against the "judgment" of the superior court (Juma J) delivered on 10th December, 1999 whereby the learned Judge dismissed an application brought by the applicant by way of a chamber summons objecting to a bill of costs taxed by the Taxing Officer (Mr Opondi) in the sum of KShs.86,275/=. The bill of costs was in respect of a suit based on a tenancy. I have perused the bill of costs lodged in the superior court. It is one of the most inarticulately drawn bill of costs I have seen. Profit costs and out of pockets (amongst other matters) are all jumbled up. **Rule 69 of The Advocates (Renumeration) Order** has been totally disregarded in the process of drawing up the bill of costs. The intended appeal would certainly be meritorious but the issue that I have to decide is whether or not there is an acceptable explanation before me to enable me to enlarge the time as sought.

The notice of appeal was filed in time. The letter bespeaking copies of the proceedings and "judgment" was lodged in court in time. I checked this personally from the court file as Mr Wachira for the respondent had raised the issue that even that letter was not filed in time. Mr Wachira however, eventually conceded that such filing was in time.

Copies of the proceedings and "judgment" were ready for collection on 31st March, 2000 so that the appeal ought to have been lodged by 31st May, 2000. Instead the applicant's advocates waited until 7th July, 2000 to lodge this application. The reasons advanced in Mr Mussilli's affidavit in support of the application are:

*(1)They were unable to obtain further instructions from their client for lodgment of the appeal.*

*(2)The process of binding the record of appeal took two weeks to finish as the process was "dogged" by power failure in their offices.*

Mr Osoro who appeared before me to argue the application abandoned the grounds shown in the affidavit of Mr Mussilli and instead stated that his problem was whether to lodge the appeal at Nyeri or at Nairobi and that their computer had broken down. These new grounds advanced before me do not satisfy me. They appear to be the afterthoughts. It can be seen straightaway that the grounds are invented.

I am not satisfied that the application before me is made bona fide. Delay (simple inaction) is sought to be explained away by contrived grounds. This application is dismissed with costs.

Dated and delivered at Nyeri this 27th day of October, 2000.

A. B. SHAH

-----

JUDGE OF APPEAL

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

DEPUTY REGISTRAR