



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, J.A. (IN CHAMBERS)
CIVIL APPEAL (APPLICATION) NO. 104 OF 2000
BETWEEN**

**BENSON NGUGI MUIRURI APPLICANT
AND
KENYA NATIONAL CAPITAL CORPORATION LTD. RESPONDENT**

**(Appeal from the judgment of the High Court of Kenya at Nairobi (Keiwua, J) dated 10th day of
February, 1998**

**in
H.C.C.C. NO. 1981 OF 1993)**

RULING:

I am asked under Rule 4 of the court's rules to do two things, namely:-

- (i) to extend to the applicant further time within which to file and serve a record of appeal and that the record of appeal filed on the 10th May, 2000 be deemed to have been filed and served within such extended time;
- (ii) that I should grant to the applicant leave to file a supplementary record.

I will deal with the second prayer first. From what I gathered during the hearing of the motion, the reason why the applicant seeks to file a supplementary record is that certain documents have been omitted from the record already filed. I have not been told the nature of those documents and hence I am not in a position to say whether they are the kind of documents that can be introduced into the record of appeal by way of a supplementary record. Mr. Mbugua for the applicant appeared to indicate that the documents are exhibits which were produced in the superior court. If that were so, I would have no jurisdiction to grant leave to enable those documents to be introduced by way of a supplementary record of appeal. I refuse to grant prayer number two in the notice of motion and that prayer is dismissed.

As for the first prayer, the applicant was on the 5th April, 2000, given thirty days within which to file a fresh record of appeal. Those thirty days would have ended around 4th May, 2000. He filed a record of appeal on 10th May, 2000 and that was clearly outside the stipulated time. The explanation he gives for the failure to comply with the order of the court is that he fell ill and he spent Shs.10,000/= on his treatment. That was part of the money he intended to use to lodge his appeal. He has not attached any hospital documents to show that he was ill, but he has attached a cashsale receipt to show that he bought medication worth Shs.10,000/=. Taking into account the fact that the applicant was late by less than ten days, I am inclined to exercise my discretion in his favour. The appeal has already been filed and it would be too hard on him to deny him the extension he seeks. I take into account the fact that he was ordered to pay costs of Shs.3,000/= within fourteen days from the 5th of April, 2000 and that he has not done so upto now. That, however, is mitigated by the fact that the court specifically ordered that if the money was not paid within the stipulated time, the respondent was at liberty to levy execution. Whether the notice of

appeal has or has not been served is a matter which can only be determined at a different forum. If the respondent has not been served with the notice of appeal, I am sure their advocates will know what to do in the matter. Accordingly, I allow prayer one in the notice of motion dated and lodged in court on the 25th May, 2000 and I make the following orders:-

(i)I extend the time within which the record of appeal was to be lodged to include the date 10th May, 2000 when the record was in fact lodged. The record of appeal lodged on that date is deemed to have been lodged in time.

(ii)If that record has not been served on the respondent, the same must now be served within two days of the date hereof. If it has been served, then the time for serving it is extended to the date when it was in fact served.

(iii)I assess the costs of this motion at Shs.3,000/= and the applicant must pay that sum within seven days of the date hereof.

If that money is not paid within the said period, i.e. within seven days from to-day, all the orders herein shall stand vacated and the motion of 25th May, 2000/= shall stand dismissed with costs without any further orders.

The other Shs.3,000/= ordered by Akiwumi, JA cannot form part of my present orders because the respondent was told how to proceed in the event of its not being paid. These shall be my orders on the motion I have dealt with.

Dated and delivered at Nairobi this 2nd day of October, 2000.

R. S. C. OMOLO

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR