

IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OWUOR, J.A (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 304 OF 1999
BETWEEN

SURCO LIMITEDAPPLICANT
AND
PRABHA MAHESH GUDKARESPONDENT

(An application for extension of time to file record of appeal out of time in an intended appeal from the ruling of the High Court of Kenya at Nairobi (Mr. Justice Githinji) dated 27th October, 1997

in

H.C. Misc. A. No. 1153 of 1996)

R U L I N G

This is an application under rule 4 of the Rules of this Court ("the Rules") for an extension of time to file a record of appeal. The application is supported by an affidavit of Rustam Hira, the advocate for the applicant, sworn on 1st day of November, 1999.

The ruling which is intended to be appealed against was delivered on 27th of October, 1997. The applicant was dissatisfied with the ruling and applied for a certified copy of the ruling and proceedings for the purpose of appeal by a letter dated 3rd November, 1997. The letter was not copied to the other party. The applicant therefore could not avail itself of the automatic extension under the proviso of rule 81 of the Rules. This application was not filed till 2nd November, 1999. A little bit over 24 months since the ruling was delivered. The reason for the delay as stated in the affidavit and submission is:

"That the certified copies of Ruling and Proceedings were received to my office on 4th June, 1999 and a certified copy of the decree received on 15th July, 1999 but I was only informed of the same on or about 27th October, 1999.

That immediately I came to know of the receipt of the certified copies of the Ruling and proceedings and without any undue waste of time I am filing this application for extension".

It is true that under rule 4 of the Rules, the court has the widest measure of discretion, but however wide the discretion is I must exercise it judiciously. In this application, I am being asked to extend time when I can find no explanation whatsoever in the supporting affidavit as to what was happening in a period of twenty months, when the certified proceedings were asked for and three months after receipt of the certified decree, when counsel acted without undue delay, so he says, by filing this application. There is not even a single letter to the Registry of the superior court to indicate that the applicant was anxious to prosecute its appeal save for counsel's statement that he asked for proceedings. There is no other evidence as to why there was this delay of a period of almost two years. Even after the receipt of the decree on 5th July, 1999, it took and yet another three months before the application was filed. The mere fact that three months elapsed when the documents were in counsel's office, in itself is a clear indication as to how little attention was being paid to the matter.

It is unfortunate, but the explanation offered by counsel does not satisfy me. The two years delay was inordinate. I am not satisfied that I should exercise my discretion in favour of the applicants. The application is therefore dismissed with costs.

Dated and delivered at Nairobi this 17th day of March, 2000.

E. OWUOR

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR