



**IN THE COURT OF APPEAL FOR EAST AFRICA**

**AT MOMBASA**

**(Coram: Wambuzi P, Law V-P & Mustafa JA)**

**CIVIL APPEAL NO 55 OF 1975**

**ABDUL AZIZ NGOMA ..... APPELLANT**

**VERSUS**

**MUNGAI MATHAYO**

**THUO MACHARIA ..... RESPONDENTS**

(Appeal from Judgment and Decree of the High Court of Kenya at

Mombasa (Sheridan J.) dated 9th September 1975

in

(Civil Case No 236 of 1974)

**JUDGMENT**

We have before us for decision two applications, which have been consolidated. The first is by the respondents in this appeal asking that the appeal be struck out as incompetent on the ground that the memorandum and record of appeal were not served on the respondents within seven days of filing as required by rule 87 of the rules of this court. The second application is by the appellant and it asks for a sufficient extension of time to validate the service.

The facts are briefly that the memorandum and record of appeal were filed in the Mombasa sub-registry of this court on 15th November 1975.

By rule 87:

The appellant shall before or within seven days after lodging the memorandum of appeal and the record of appeal ... serve copies thereof on each respondent.

In fact, service of these documents was not effected until 29th December 1975.

Mr Jiwaji for the appellant has been unable to point to any sufficient reason within rule 4 of the Rules of this Court to justify the exercise by this Court of its discretion to extend time. He submitted, however, that in the absence of any prejudice caused by the delay in effecting service and as the matter was purely

procedural and not of substance, it would be a denial of justice to the appellant not to grant him the necessary extension of time. We have considerable sympathy for these submissions and are reluctant to exclude an appellant because of a procedural error on the part of his advocate but we consider that we are bound by the decision of this court in *Shah Meghji Mulji Ltd v Shah Kanji Meghji* (unreported) in which this Court held that where no sufficient reason has been given for noncompliance with rule 87 this Court cannot extend time. Mr Jiwaji has invited us not to follow that decision, the facts of which are similar to the matter now under consideration. This Court, however, normally regards a previous decision of its own as binding (*Dodhia v National & Grindlays Bank Ltd* [1970] EA 195 and will only depart from a previous decision of its own if satisfied that it was given. No such consideration arises in the case of *Shah Meghji Mulji Ltd*, which is accordingly binding on this Court. It follows that, in our opinion, we have no other course open to us than to dismiss the appellant's application for an extension of time, and to allow the respondents' application to strike out the appeal as incompetent. We order accordingly. The respondents will have the costs of these consolidated applications and of the appeal.

We would like to state once again that this court's discretion to extend time under rule 4 only comes into existence after "sufficient reason" for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.

*Order accordingly.*

Dated at Mombasa this 20<sup>th</sup> Day of February 1976

**S. W. W. WAMBUZI**

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**PRESIDENT**

**E. J. E. LAW**

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**VICE-PRESIDENT**

**A. MUSTAFA**

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**JUDGE OF APPEAL**