



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CIVIL MISCELLANEOUS APPLICATION 55 OF 1984**

**JOSHUA CHEGE WANYOIKE ..... APPLICANT**

**AND**

**JAMES THIGA MUKURO ..... RESPONDENT**

**(Application for extension of time to serve the record of appeal and the appeal be admitted of time at the High Court of Kenya at Nakuru ( Masime J ) dated December 3, 1983 In**

**High Court Civil Case No 235 of 1982**

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**RULING**

The applicant was duly served with the notice for the hearing of the application but did not attend as required. The application was then stood over to this morning hoping that in the meantime the applicant would make enquiries so as to be notified of this morning's hearing. There is no appearance again today. Under the circumstances the hearing proceeded ex parte under rule 55(1).

Mr. Patel has submitted that the notice of appeal was filed out of time in that the judgment having been delivered on December 3, 1984 the latest date for filing the notice of appeal was December 7, 1984, but it was filed on December 21, 1984. This is clearly out of time. The applicant has not applied for this time to be extended as a step to be corrected in the appeal. Instead, the application before me is for extension of time within which to file the record of appeal.

Even for that application, no reasons have been stated as to the cause of delay. It is unfortunate that even the replying affidavit filed by Mr Patel on September 18, 1986 and served on the same day no further affidavit by the applicant has been filed in answer to that replying affidavit.

The court has no explanation from the applicant on these matters. There is nothing I can do but to dismiss this application with costs to the respondent It is so ordered.

**Dated at Nakuru this 29th day of September, 1986.**

**JM GACHUHI**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**