

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLICATION NO. NAI 163 OF 1997 (NAI.65/97 UR)

BETWEEN

KENYA NATIONAL CAPITAL CORPORATION APPLICANT

AND

JOHN NDUNGU NJAU

**(Application for extension of time to file and serve
Notice and Record of Appeal against the Judgment of
the High Court of Kenya at Nairobi (Justice Shah)
dated 23rd December, 1994**

in

H.C.C.C. NO. 2560`A' OF 1989

R U L I N G

The present application is for the extension of time for the filing of a Notice of Appeal in an intended appeal and the related record of appeal. The applicant's original appeal had been struck out for being incompetent in that the date shown on the extracted decree as the date of the judgment, differed from that shown in the record of appeal as the date of judgment. Another reason was that a supplementary record of appeal had also been filed without leave. The striking out was on 17th January, 1997, and it was not until 2nd July, 1997, that the applicant filed the present application. The explanation for this delay was the time taken to obtain the rectification of the decree in the High Court, that is from 22nd January, 1997, when the related application was made, until 2nd July, 1997, was due to the difficulties experienced in tracing the court file in the High Court, and the funeral and burial arrangements that Advocate for the applicant became involved in due to the death of her father in May, 1997. The respondent who appeared in person did not oppose the application on this ground. He, however, opposed it on the ground that the notice that the applicant filed on 18th March, 1997, which is sought to be deemed to have been filed in time, though stamped with the High Court stamp as having been filed on 18th March, 1997, does not show the date when it was drawn.

I think that the substantial part of a Notice of Appeal is in this case, the notification of the applicant's dissatisfaction with the whole of the decision of the judge of the superior court, its intention to appeal in that respect, and the specification of the intended appellant's address and the address of the respondent on whom the Notice of Appeal would be served. The fact that the Notice of Appeal in question is date stamped by the registry of the High Court and signed by the Deputy Registrar of the High Court, in my view, makes the failure of the Notice of Appeal to contain the date on which it was drawn, in the circumstances, not such an omission that should render the Notice of Appeal useless. In anycase, if I come to the conclusion as I do, that I should exercise my unfettered discretion to extend time for the filing of the Notice of Appeal, I can grant time within which a fresh one should be filed.

In the result, I will grant the applicant 7 days within which to file its Notice of Appeal and 30 days thereafter within which to lodge its record of appeal. The applicant should note that the respondent is now acting in person. The respondent will have his costs for this application which is assessed at 1,500/= to be paid within 7 days of today, in default, execution to issue.

Dated and delivered at Nairobi this 8th day of July, 1997.

A. M. AKIWUMI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.