



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: SHAH, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 190 OF 2000**

BETWEEN

CLASSIC JUA KALI CO-OP SOCIETY LTD.....APPLICANT

AND

NATIONAL COUNCIL OF CHURCHES OF KENYA & OTHERS.....RESPONDENT

**(An application for leave to appeal out of time in an
intended appeal from a Judgment of the High Court of
Kenya at Nairobi (Mbaluto, J) dated 24/9/1999**

in

H.C.C.C. NO. 932 OF 1996)

R U L I N G

I have before me an application brought under rules 4 and 42 of the Rules of this Court (the Rules) whereby the applicant, Classic Jua Kali Co-operative Society Limited, seeks extension of time to lodge its record of appeal out of time. The judgment sought to be appealed against was delivered on 24th September, 1999 by the superior court (Mbaluto, J). The applicant is a co-operative society registered under the ***Co-operative Societies Act*** . It had sued the respondent, National Council of Churches of Kenya, and others (I do not know who ***the others*** are as there is no mention thereof in the application before me) seeking orders to the effect that the respondent was holding a parcel of land situated in Nairobi and known as L.R. No.209/9324 in trust for the applicant and for some consequential orders. The plaint or the defence are not included in the application. The learned Judge declined to make the orders sought and dismissed the applicant's suit.

The applicant was aggrieved by the judgment and duly lodged its notice of appeal manifesting its intention to challenge the said judgment. The notice of appeal was lodged in time. The letter requesting copies of proceedings and judgment to enable the applicant to lodge its intended appeal was filed in time. So far so good. But the problem that is now faced by the applicant is that it has run out of time to lodge the record of appeal.

The ground upon which the application is based is that the copies of the proceedings and judgment were supplied after the time to lodge the record of appeal had expired. A simple reading of the proviso to rule 81(1) as read with rule 81(2) of the Rules tells the reader that whilst the intended appellant is awaiting delivery of the copies of proceedings and judgment, the time to lodge a record of appeal is suspended, provided the letter requesting the copies in question was copied to the respondent.

I will assume for the purposes of this application that copies of proceedings and judgment were available to the applicant by 3rd May, 2000. The time began running then and the applicant ought to have lodged its record of appeal by 2nd July, 2000. It did not. Instead it waited until 14th July, 2000 to lodge this application.

No acceptable explanation has been given to justify the non-filing of the record of appeal between the period 3rd May, 2000 to 2nd July, 2000. It is not enough merely to say that the copies of proceedings and judgment were supplied after the date for lodgment of the appeal had expired in the face of the proviso to rule 81(1) of the Rules.

It has been stated by this Court in the case of *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi* (Civil Application No. Nai. 255 of 1997) (unreported) that:

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and, fourthly the degree of prejudice to the respondent if the application is granted."

Apart from what this Court said in *Leo Sila Mutisa* case it has been held that mere non-reading of a simple rule -as opposed to a genuine mistake in interpreting a complex point - does not entitle a party to an extension of time. I think it has been said time and again and I say so again that rules have a specific purpose. Although hand-maids to justice, rules set up a regimen to be followed so that litigation ought to end as soon as practicable. If rules were broken with impunity or not even read there would be no end to litigation.

I need not here consider the reason or length of delay and the issue does not arise. This is a classic case of nonreading of a rule. The less I say on the chances of the appeal succeeding the better it would be. The respondent is the registered proprietor of the suit land. The applicant occupies the suit land through some of its members and there was sufficient evidence before the learned judge to show that some members of the applicant were tenants of the respondent even before the applicant came into existence. The concept of trust relied upon by the applicant appears to be far too nebulous.

Another factor that has weighed on my mind is that the applicant did not disclose to me that it was granted a stay of execution of the decree by the superior court on the condition that it deposits a sum of Sh.2,500,000/= in court. The applicant also did not disclose the fact that its members did not pay heed to the Orders of Mbaluto, J made on 1st March, 1999. When the applicant is using the respondent's land with impunity treating it as its own in the face of express findings by the superior court, it is not deserving of the exercise of any discretion. I note that the applicant did not even attempt to comply with the condition of stay imposed by Mbaluto, J.

The manner in which the applicant, through its members, is using the suit land, throws the principle of sanctity of title overboard.

Considering all the circumstances in which this application has been lodged and considering the behaviour of the applicant's members I am not at all minded to exercise my undoubted discretion to extend time. This application is dismissed with costs.

Dated and delivered at Nairobi this 31st day of January, 2001.

A.B. SHAH

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JUDGE OF APPEAL

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