



**IN THE COURT OF APPEAL OF KENYA**

**AT NAKURU**

**Civil Appli 6 of 2007 (NAK. 1/07)**

**WILLIAM K. TOO .....APPLICANT**

**AND**

**SIMION K. LANGAT .....RESPONDENT**

*(An application for extension of time within which to lodge and serve the notice of appeal and record of appeal out of time in the intended appeal from judgment and decree from the decision of the High Court of Kenya Kericho (Mr. Justice Luka Kimaru) dated 3<sup>rd</sup> November, 2006 In H.C.C.C. NO. 5 OF 2003)*

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**RULING OF THE COURT**

*Mr. Obwatinya*, learned counsel for the applicant, appears to think, wrongly in our view, that it is for us to exercise our discretion in this reference and enlarge time for the applicant to appeal.

But the discretion was exercised by the learned single Judge and we, on reference, are not entitled to substitute his exercise of discretion with our own.

It is agreed there was an unexplained delay of some forty-two days. The learned single Judge considered that delay and concluded that not only was it unexplained but also inordinate. He then refused to extend time. We have not been shown any basis upon which we can interfere with the exercise of his discretion. There is no merit in this reference and we order that it be and is hereby dismissed with costs to the respondent.

*Dated and delivered at Nakuru this 28<sup>th</sup> day of September, 2007.*

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**P. K. TUNOI**

.....

**JUDGE OF APPEAL**

**E. M. GITHINJI**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**