



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**

**AT MOMBASA**

**Civil Appeal (Application) 162 of 2007**

**COMARCO PROPERTIES LIMITED ..... APPLICANT/RESPONDENT**

**AND**

**ERES N. V.**

**ERES ENTERPRISES LIMITED ..... RESPONDENTS/APPELLANTS**

***(Application for extension of time to deem as lodged in time the application dated 10<sup>th</sup> September, 2007 to strike out a notice of appeal from the ruling and order of the High Court of Kenya at Mombasa (Maraga, J.) dated 25<sup>th</sup> May, 2007***

**in**

**H. C. C. NO. 187 OF 1994)**

**\*\*\*\*\***

**RULING**

This application is conceded. It is seeking an order that the application dated 10<sup>th</sup> September, 2007 and lodged in Civil Appeal No. 162 of 2007 be deemed to have been lodged within time upon the extension of time to deem the same as having been filed in time. The main ground on which the application is based is that the delay was occasioned by misunderstanding on the part of the applicant's advocates who received the record of appeal without the number of the appeal and felt that the application to strike out the appeal would be lodged within thirty days after receipt of the number. This was a misapprehension and it meant a delay of some 88 days but, the application was filed within 30 days after receipt of the number of the appeal. This is the main reason for the delay and it has not been challenged by the respondent's (appellant) counsel who conceded the application. On my part, I do not see any reason to doubt the applicant's counsel and I do accept that such mistakes do happen even when senior counsel are involved in the matter. I will accept it as a proper explanation. The application is already filed and I cannot say at this juncture that it has no merit. There will be no prejudice to the respondent (appellant) as the application is already filed for hearing and thus no inordinate time wastage will occur.

The application is allowed. The notice of motion dated 10<sup>th</sup> September, 2007 and filed on the same date is deemed to have been filed within the time required by the Rules as the time to file it is hereby extended to cover the time within which it was filed. I make no order as to the costs of this application. Dated and delivered at Mombasa this 27<sup>th</sup> day of January, 2010.

**J. W. ONYANGO OTIENO**

.....  
**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR