



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: MASIME, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 155 OF 1989

BETWEEN

MACHARIA KABURU.....APPLICANT

AND

BETH WANJIRU KARIMIRA.....RESPONDENT

(An application for extension of time to file an intended

appeal from an order of the High Court of Kenya at

Nairobi (Mr. Justice Shield, J) dated 22/7/88 in

H.C.C.C. NO. 1517 OF 1985)

R U L I N G

This is an application under Rule 4 of this Court's Rules for extension of the time limited by Rule 74 for the lodging of a notice of intended appeal from the ruling of the superior court dated the 22nd July, 1988. This application was itself filed on 15th September, 1989 that is to say there had been a delay of more than one year. In support of the application an affidavit has been sworn to the effect that a disagreement occurred between the applicant and his then advocate which caused the delay.

Two affidavits have been filed in reply the effect of which is that the applicant's alleged reason for the delay is not correct. It appears that after the ruling of 22nd July, 1988 the applicant's counsel M/S Kamere & Co., continued to act for him and filed an application for review of the ruling on 15th August, 1988 and for stay of execution and injunction on 7th November, 1988. Copies of the said applications were annexed to the replying affidavits. The learned counsel for the Respondent therefore submitted that the decision to appeal was an after thought and the delay to file the Notice of Appeal was not due to the alleged disagreement between the applicant and his previous counsel.

Further I perused the copy of the proceedings before the superior court and found that they concerned an arbitration award. After the award was filed and the parties notified thereof the applicant sought to have the award set aside. That application was dismissed but rather than appeal the applicant a review and stay. The decision to appeal appears to have been made after a delay of more than a year.

Upon consideration of all the circumstances and the nature of the matter. I am of the view that the discretion of the court should not be exercised in favour of the applicant and I refuse to do so. Accordingly I refuse the application and dismiss it with costs.

Dated and delivered at Nairobi this 27th day of June, 1990

J.R.O. MASIME

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR.



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