



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

Civil Appli 104 of 2000

**HAMENDRA MANSUKHLAL
SHAH.....APPLICANT**

AND

1. ALNOOR KARA

2. PREMIER SAVINGS & FINANCE LIMITED.....RESPONDENTS

**(An application for extension of time to file a Notice of Appeal and Record of Appeal out of time
in an intended appeal from a Ruling of the High Court of Kenya at Mombasa (Waki, J.)**

dated 21/10/97

in

H.C.C.C. NO. 205"A" OF 1996)

RULING OF THE COURT:

By this reference the applicant asks us to set aside the decision of the learned single judge of this Court by which she refused to exercise her discretion by granting leave to the applicant to file and serve a notice of appeal and lodge an intended appeal out of time.

The delay involved in failing to file the Notice of Appeal is 47 days. There is no evidence whatsoever that the Court file went missing from the Registry within that period. After all this fact alone could not prevent the applicant from lodging the Notice. Moreover, it is trite law that a notice of appeal is a simple and not a complicated document which does not need a lot of ceremony to lodge. Especially where the applicant's Advocate had 7 days after the decision intended to be appealed against, applied to withdraw from representing the applicant, an affidavit from that Advocate's clerk explaining the delay in lodging the Notice of Appeal was crucial. But no such affidavit was filed in support of the application to the Single Judge of this Court.

We are of the view that the learned single judge of this Court correctly and judicially exercised her discretion against the applicant. We cannot fault her. The reference is dismissed with costs.

Dated and delivered at Mombasa this 19th day of January, 2001.

A.M. AKIWUMI

.....

JUDGE OF APPEAL

P.K. TUNOI

.....

JUDGE OF APPEAL

M. KEIWUA

.....

JUDGE OF APPEAL

I certify that this is true copy of the original.

DEPUTY REGISTRAR



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