



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

AT NAIROBI

(Coram: Gicheru, Pall JJ.A. & Bosire, Ag. J.A.)

CIVIL APPLICATION NO. NAI. 183 OF 1997

BETWEEN

JAMES GITHEGI.....APPLICANT

AND

NANCY MUTHONI.....RESPONDENT

(Application for extension of time to file Notice and Record of Appeal in an

intended appeal from a Ruling of the High Court of Kenya at Nairobi

(Akiwumi, J.) dated 5th July, 1988

in

H.C.C.C. NO. 2712 OF 1985)

RULING OF THE COURT:

The decision of the superior court against which the applicant intends to appeal to this Court was given on 5th July, 1988. His first appeal to this Court against that decision was withdrawn on 28th June, 1995 and a subsequent appeal against the same decision was on 4th July, 1997 struck out. Two weeks later the applicant applied to this Court for extension of time within which to lodge the notice and record of

appeal against the said decision. His application came up for hearing before the single judge of this Court on 7th August, 1997. In his ruling in that application, the single judge observed that over the years, the applicant has had two opportunities to file an appeal against the aforementioned decision but on each occasion he has faltered. According to the single judge therefore, justice had to be done to both parties and it was not fair to the respondent who had been stalled for 9 years with no fault of hers. On account of this, the single judge declined to exercise his discretion under rule 4 of the Rules of this Court in favour of the applicant and rejected the applicant's application with no order as to costs. It is against that rejection that the applicant makes the present reference to the full Court.

At the hearing of this reference on 3rd October, 1997, counsel for the applicant submitted that the lapses in properly bringing the applicant's appeal to this Court could only be visited on his previous counsel and not on himself. Counsel also was of the view that the applicant's intended appeal had high probabilities of success and for that reason urged that this reference be granted. To counsel for the respondent, however, in view of the lapses referred to above, this reference is no more than an abuse of the process of this Court.

Whether or not the respondent had stalled for 9 years since the decision of the superior court against which the applicant intends to appeal may not be apparent from the record of the application before the single judge of this Court. Nevertheless, the applicant having had two previous opportunities to properly lodge his appeal to this Court against the aforesaid decision which opportunities he threw away, the single judge of this Court cannot be faulted for having declined to exercise his discretion under rule 4 of the Rules of this Court in favour of the applicant. In the result, we think that this reference must fail. The same is dismissed with no order as to costs.

Dated and delivered at Nairobi this 7th day of October, 1997.

J.E. GICHERU

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JUDGE OF APPEAL

G.S. PALL

.....

JUDGE OF APPEAL

S.E.O. BOSIRE

.....

JUDGE OF APPEAL

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

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