



Case Number:	Civil Appli 104 of 2000
Date Delivered:	19 Jan 2001
Case Class:	Civil
Court:	Court of Appeal at Malindi
Case Action:	-
Judge:	Akilano Molade Akiwumi, Philip Kiptoo Tunoi, Moijo Matayia Ole Keiwua
Citation:	HAMENDRA MANSUKHLAL SHAH v ALNOOR KARA & another [2001] eKLR
Advocates:	-
Case Summary:	[RULING] Appeal-extension of time-where the applicant seeks orders setting aside the judge's refusal to grant leave to lodge appeal out of time-where the delay in failing to file notice of appeal is 47 days and there is no evidence that the court file went missing from the registry within that period-whether the refusal orders should be set aside in such circumstances
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**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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