**Apondi v Canuald Metal Packaging**

**Division:** Court of Appeal of Kenya at Nairobi

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**Date of ruling:** 11 May 2005

**Case Number:** 288/04

**Before:** Waki JA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Appeal – Leave to appeal as pauper – Extension of time to file appeal – Principles in determining*

*whether to allow pauper appeal – Rules 4 and 112 – Court of Appeal Rules.*

*[2] Civil procedure – Pauper litigation – Principles to consider.*

**EDITOR’S SUMMARY**

The applicant sought extension of time to file his appeal and also leave to appeal as a pauper. He had been an employee of the respondent until he was summarily dismissed subsequent to suffering some grievous injury. He instituted a suit in a lower Court and was awarded a certain sum as damages. He made a further application for review after executing the initial decree, and succeeded in obtaining an enhanced decree to the limit of the pecuniary jurisdiction of the said Court, which he also eventually executed. Some years later, he filed an application seeking a further enhancement of the decree which was this time successful. He appealed to the High Court and subsequently filed a second appeal. The applicant claimed that he had used all his previous decrees to settle his medical bills and he was a pauper unable to afford the costs of litigation. The Court considered the principles to apply in extending time to file an appeal and in granting leave for litigation as a pauper.

**Held** – It is settled that in general the matters which the Court takes into account in deciding whether to grant extension of time are first the length of the delay, secondly the reason given for the delay, thirdly the chances of the appeal succeeding and fourthly the degree of prejudice to the respondent if the application is granted. Whether the matter is of public importance is also a relevant consideration.

*Mariaria and others v Matundura* [2004] 2 EA, *Mutiso v Mwangi* [1999] 2 EA and *Murai v Wainaina*

(No. 1) [1982] KLR 38 followed. For an application to appeal as a pauper to succeed, the appellant must satisfy the Court that he lacks the means to pay the required fees or deposit the security for costs and that the appeal is not without reasonable possibility of success. If the allegations do not show a cause of action, or even where they show a cause of action but the Court was satisfied that the appellant could not recover more than nominal damages, the Court will be justified in refusing permission because it would be unjust to the other party who would have to incur substantial costs which might not be recoverable. In this case, the applicant had not shown that his cause of action was likely to succeed.

Application dismissed.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Mandevia v Rongwe African Co-operative Union Limited* [1958] EA 524

*Mariaria and others v Matundura* [2004] 2 EA – **F**

*Murai v Wainaina (No. 1)* [1982] KLR 38 – **F**

*Mutiso v Mwangi* [1999] 2 EA – **F**