**Devshi v Diamond Concrete Co**

**Division:** Court of Appeal at Nairobi

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**Date of judgment:** 5 December 1974

**Case Number:** 16/1974 (6/75)

**Before:** Law Ag V-P

**Sourced by:** LawAfrica

*[1] Appeal – Out of time – No action for* 3½ *years – Application refused although not opposed.*

**Judgment**

**Law Ag V-P:** The applicant was one of two defendants in a suit tried in the High Court in 1971, judgment being delivered in March 1971 in favour of the respondent to this application. The applicant attended the hearing of the suit but did not give evidence, being apparently content to rely on the evidence of his co-defendant. He was legally represented at the trial. Notice of appeal was duly filed on behalf of both the applicant and his co-defendant in time on 6 April 1971. No further steps have been taken to prosecute the appeal since then. The only reason put forward by the applicant why indulgence should be granted to him is that since attending the hearing he has, I quote, “heard nothing further about this matter”. Mr. R. N. Khanna for the respondent is prepared to agree to this application being allowed on terms that costs owed to the respondent are paid in full within 4 weeks. That agreement does not relieve me of the duty of satisfying myself that sufficient reasons have been shown for extending time. The applicant must have been aware of the result of the trial as embodied in the judgment. If he was not, it is his own fault, because a litigant cannot plead ignorance of his own cause. Notice of appeal was filed on his behalf presumably on his instructions, because it is my experience that advocates do not take steps involving the expenditure of money without receiving instructions. That was 3½ years ago. Since then the applicant has done nothing to prosecute the appeal. He has been spurred into action because execution proceedings have been put in train against him. He is unable to put forward a single valid reason why he should have time extended at this late stage except his belief that the appeal has reasonable prospects of success. That is a factor for consideration in applications of this nature but the main factor, and the burden is on the applicant in this respect, is that the court must be satisfied that for some sufficient reason it was not possible for the appeal to be lodged in the time prescribed. There is absolutely no reason here shown to me why the appeal could not have been lodged in time and I would be failing in my duty if I were to give effect to the agreement between counsel. I have no doubt that this is an application which is devoid of merit and I cannot in conscience allow it. It is accordingly dismissed with costs to the respondent. *Application dismissed.*

For the applicant:

*D Cassidy*

For the respondent:

*RN Khanna* (instructed by *Khanna & Co*, Nairobi)