**Mariaria and others v Matundura**

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

**Date of ruling:** 26 March 2004

**Case Number:** 301/03

**Before:** O’Kubasu JA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Appeal – Time – Extension of time – Delay of three and a half months – Delay attributable to*

*applicant’s previous counsel – Whether extension of time would be granted – Rule 4 Court of Appeal*

*Rules.*

**Editor’s Summary**

The applicant filed an application seeking extension of time to file a notice and record of appeal. It was

claimed that the delay was due to missing documents which were not traced in time by the applicant’s previous counsel. The respondent urged the Court not to accommodate the carelessness of counsel, and also argued that the abandonment of the prayer for extension of time to file notice of appeal rendered the application defective.

**Held** – The decision whether or not to extend time for appealing is essentially discretionary. The Court will take into account (1) the length of the delay, (2) the reason for the delay, (3) the chances of the appeal succeeding if the application is granted, and (4) the degree of prejudice to the respondent if the application is granted. A three month delay without proper explanation like in the current case was inordinate. The litigant in such a case can claim damages from his advocate. The application would therefore be dismissed with costs.

**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)

*Mutiso v Mwangi* [1997] LLR 630 (CAK) – **APP**

*Omar Transmotors Ltd and another v Onyango* [2002] LLR 3774 (CAK) – **APP**

*Samken Ltd and another v Tussel and another* [1999] LLR 898 (CAK) – **APP**