**Maritim v Kibaru**

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

**Date of judgment:** 30 September 2005

**Case Number:** 362/04

**Before:** O’Kubasu JA

**Sourced by:** LawAfrica

*[1] Appeal – Extension of time for lodging and serving appeal – Applicable principles – Rule 4 – Court*

*of Appeal Rules.*

**Editor’s Summary**

The applicant moved court by way of notice of motion under rule 4 of the Court of Appeal Rules seeking orders for the extension of the time limited for lodging and filing the notice and record of appeal from a decision of the superior court. There had been a long delay of seventeen months. Soon after the judgment of the superior court had been delivered the court file went missing and efforts were even made to reconstruct a skeleton file. The applicant also changed advocates and the new firm of advocates did not move with speed in putting things in place. These were the facts that led to the delay and on the strength of which the applicant sought the court’s exercise of discretion to extend the time as prayed. **Held** – In an application under rule 4 of the Court of Appeal Rules, a single judge of the Court of Appeal is called upon to exercise his unfettered discretion but like any other judicial discretion, that discretion must be exercised with reason. The matters which are to be considered whether to grant an extension of time are, first, the length of the delay, the reason for the delay, the chances of the appeal succeeding and the degree of prejudice that the respondent may suffer if the application is granted.

**Cases referred to in judgment**

(“**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)

***East Africa***

*Grindlays Bank International* (*K*) *Limited v Barbour* Civil application number Nairobi 257 of 1995

*Kiragu v Kiragu and another* Civil application number Nairobi 356 of 1996 (UR)

*Mutiso v Mwangi* Civil application number Nairobi 251 of 1997

*Patel v Waweru and others* [2003] KLR 361 at paragraph 362-3

*Trade Bank Limited* (*In Liquidation*) *v LZ Engineering Construction Limited and another* Civil application number Nairobi 282 of 1998

***United Kingdom***

*Ratman v Camarasamy* [1964] 3 All ER 933