



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Appeal 77 of 2000**

HARRISON MAINA KARIUKI.....1<sup>ST</sup> APPELLANT  
JOHN KIMANI KARIUKI.....2<sup>ND</sup> APPELLANT  
ISAAC NGANGA KARIUKI.....3<sup>RD</sup> APPELLANT  
**VERSUS**  
JANE WAIHERA MUNGAI.....1<sup>ST</sup> RESPONDENT  
MUNGAI MUTEMBEI.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

On 30<sup>th</sup> October 2009 this court (Justice Mugo), upon the respondent's application, dismissed this appeal for want of prosecution. Aggrieved by that ruling the 1<sup>st</sup> appellant filed a notice of appeal on 23<sup>rd</sup> November 2009 and applied for a copy of the proceedings to enable the appellants file a record of appeal. As that was after the 14 days period allowed for appeals to the Court of Appeal, they have now applied for enlargement of time to deem the said notice of appeal as having being filed timeously.

The application is based on the ground that the ruling was delivered in the absence of the appellants and without notice to them and that by the time they knew of it the time for filing the notice of appeal had already expired.

Mr. Ombati for the respondents strongly opposed the application arguing that the same is intended to perpetuate the injunction order which the appellants are enjoying.

Section 7 of the Appellate Jurisdiction Act read together with Rule 41 of the Court of Appeal Rules gives this court jurisdiction to extend time for the filing of the notice of appeal. However, where the applicant has already filed a notice of appeal, the matter is taken out of the jurisdiction of this court. In such a case the applicant has to make his application for enlargement of time to the Court of Appeal – Trimborn Agricultural Engineering Ltd Vs David Njoroge Kabaiko & Another, Civil Apl. No. 274 of 1998.

The applicants having filed a notice of appeal out of time this court has no jurisdiction to entertain this application. They therefore have to apply to the Court of Appeal. Their application in this court is in the circumstances incompetent and is accordingly struck out with costs to the respondents.

**DATED and DELIVERED at Nakuru this 25<sup>th</sup> day of May, 2010.**

**D. K. MARAGA**  
**JUDGE.**