



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 30 of 2000

VIRGINIA MUTHONI GACUKU.....1ST APPELLANT

SOFIA MUTHONI.....2ND APPELLANT

VERSUS

MICHAEL MUNENE KABURIA.....1ST RESPONDENT

JOHN KITHIGA MWAI.....2ND RESPONDENT

JOSPHAT MUCHIRI RUGANO.....3RD RESPONDENT

RULING

In this matter the High Court has made its decision. However the Applicant filed an appeal before Court of Appeal. That Court looked at the record and found that there was need to obtain leave from High Court. The order of the court of Appeal is in the file. The appeal was not dismissed but the Appeal was ordered not to proceed without leave or refusal of leave by High Court. The affidavit in support shows that the applicants were mistaken as to whether they had been granted leave to appeal or not. It appears that after Judgment of the High Court both parties thought there was need for clarification and proposed to write to court in following terms:

“Judgment in this matter was delivered by **Hon. Justice Tuyot** on 2/9/2001. However both Counsels feel that the Judgment was not quite clear and needs further clarification. Kindly therefore place the file before the Judge in Meru for further directions on 29/10/2001” That letter was not signed by both parties and dated 18/10/2001.

On 29/10/2001 the file was placed before Judge in Meru Hon. Tuiyot J. the Hon. Judge made order that “referring to counsel’s letter dated 28/10/2001 the land in dispute be divided equally as per Judgment made on 4/9/2001”. This order was made by the late Hon. W.K. Tuiyot not Hon. J.V.O.. Juma as the applicant states. Thereafter on 10/5/2002 the applicants filed an application for review. Then on 1/11/2002 the Appellants were in court of appeal in Nyeri and again on 31/10/2003 when they were granted leave to file notice of Appeal and the record. The appeal in court of appeal was before court on 25/10/2006 when it was noticed that no leave had been obtained and the appeal was adjourned. This application to enlarge time and seeking leave was filed on 6/3/2007. Several months since the court of appeal granted leave for filing supplementary record. This court has perused the record it is not true that Hon. Justice Juma granted leave to file appeal against the Judge of Hon. Justice Tuiyot delivered on 4/9/2001 (29/10/2001). Delay occasioned more than 6 years is in ordinate. The reason for the delay is not satisfactory explained. Explanation is based on untrue and incorrect statements. The strength of the success of proposed appeal is not demonstrated. It is true the subject matter of suit is inheritance of

deceased land but there is no extraordinary material point of law involved.

I therefore do not grant leave sought. The application dated 6/3/2007 is hereby dismissed. Appellants to bear the costs hereof.

Dated this 21st January, 2008.

J. N. KHAMINWA

JUDGE

21/1/2008

Khaminwa – Judge

Njue – Clerk

Mr. Gitonga HB for Chomba

Read in open court.

J. N. KHAMINWA

JUDGE