



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

MISC. APPLICATION NO. 4 OF 2003

EMILY MUMBI NJIRUAPPLICANTS

VERSUS

TRUFOSA NJERU RESPONDENT

RULING

1. The Applicant seeks leave to file an Appeal out of time. Invoking S.79 G of the Civil Procedure Act he states in the grounds in support that the Judgment sought to be appealed from is bad in law and was premised on wrong grounds and facts.

2. The intended Appeal arises from the decision in **RM's Court (Kerugoya) in Land Disputes** Case No. 50/2000 whereby the Court ordered that the O.C.S. Kianyaga do provide security during the sub-division of parcel number Ngariam/Rungeto/287. The Appellant in his Supplementary Affidavit sworn on 11.7.2003 with leave of Court states that the decision was issued on 11.9.2001.

3. The Applicant is the son of one **Njiru Njage** who died on 26.9.2000. The Orders Appealed from were issued after the death of Njiru Njage who was a party to the case before the Land Disputes Tribunal. The Applicant was not a party to those proceedings and is not a party to the case before the Resident Magistrate's Court. He however obtained Letters of Administration to his late father's estate on 17.10.2002. The Letters are not exhibited anywhere in the Application.

4. Counsel for the Respondent calls the Applicants strangers to the cause in the Lower Court and they cannot file the Appeal even if leave is granted.

5. I agree that the Application is incompetent. The applicants have not established their **Locus Standi**. They are not parties to the suit before the Lower Court and have taken no steps to substitute themselves. They have not even shown this Court that they have any interest in the matter. Worse for them, they seek leave to Appeal four (4) years after the decision in question and have not explained the delay in doing so.

They have also not explained why they obtained Letters of Administration in 2002, if at all and taken another three (3) months to file the instant Application.

6. I have sympathy for the Applicants, this being a Land matter but sadly, where they have not established themselves as sufficiently clothed with legal authority to file the Appeal, I should not exercise discretion in their favour. They may well go back to the suit intended to be Appealed from and make themselves proper parties. As it is now, even if they have authority to represent the deceased party, they

cannot jump into the matter in the manner they wish to do. Any leave granted would be of no use to them.

7. Application dated 28.1.2003 is dismissed with costs.

Orders accordingly.

Read in Open Court this 23rd day of February 2005

I. LENAOLA

JUDGE

In the Presence of;

Mr. Mutahi for the Applicant

N/A for the Respondent

I. LENAOLA

JUDGE