

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
MISC. APPLICATION NO. 477 OF 2004

JOSEPH CHEPKWONY.....1ST APPLICANT

PHILOMENA TANUI.....1ST APPLICANT

VERSUS

MARY MUTHONI GITAHU.....RESPONDENT

RULING

The Applicants, Joseph Chepkwony and Philomena Tanui, have made an application under certificate of urgency under the provisions of Section 7 of the Appellate Jurisdiction Act seeking the orders of this Court to grant leave to the Applicants to lodge an Appeal in the Court of Appeal out of time against the ruling of the Honourable Justice Alnashir Visram in Nakuru HCC Misc. App. No. 259 of 2001 delivered on the 18th of September 2002. The Application is based on the grounds stated on the face of the Application and supported by the annexed affidavit of the first Applicant, Joseph Chepkwony. I have perused the application together with the annexures thereto. The Application by the Applicants to be granted leave to file appeal out of time from the decision of the Lower Court was disallowed on the 18th of September 2002. That is over two years ago. The Applicants did not deem it appropriate or necessary to lodge an appeal from the said decision within the requisite period.

This is the second time that the Applicants have been caught with their pants down. In the first instance, they alleged that their Advocate on record did not send the correspondences to them in the correct address. In the second instance they are claiming that their Advocate on record was at fault. It is evident from the above two instances that the Applicants have been indolent. They only seem to move the Court when they realise that the train has already left the station. The Applicants have woken up from their deep slumber when Notice to Show Cause was served upon them. That is when they realised that they ought to have filed an Appeal against the decision of Visram J.

I am not prepared to grant the application by the Applicants. Their attitude is such that to grant them the said order sought would amount to rewarding the Applicants for their indolence. Furthermore, according to my understanding of the procedure for such Applications for extension of time, the said Applications ought to be filed in the Court of Appeal and not before this Court. There are plethora of Court of Appeal decisions which clearly indicate that it is the Court of Appeal which has jurisdiction to entertain such Applications and not the High Court. In the circumstances therefore the Application herein is struck out with no orders as to costs.

DATED at NAKURU this 5th day of October, 2004.

L. KIMARU

AG. JUDGE