

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1056 OF 1995

WANJAHİ GACHAU.....PLAINTIFF

-versus-

MARY WANJIRU & ANOTHER.....DEFENDANT

R U L I N G

The application herein followed a notice of appeal following the judgment of this court delivered on 22nd April, 1997. Although the notice of appeal was filed in time service was not effected in time. The respondent was served out of time. There is now before me an application to extend the time within which to serve the said notice of appeal.

Under the appellate Jurisdiction Act Cap 9 Laws of Kenya section 7 thereof, the High Court may extend the time for giving the notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for certificate that the case is fit for appeal. It has been argued on behalf of the respondent that under the said section 7, this court lacks jurisdiction to extend the time within which to serve the notice of appeal. The applicant argued otherwise and submitted that this court has jurisdiction.

Whereas it is true that once this court delivers judgment it is fuctus officio, the matters related to notice of intention to appeal remain within the jurisdiction of the court until that notice is properly lodged. I believe therefore that if the court has power to extend the time for giving notice of intention to appeal from a judgment of the High Court, it has the same power to extend the time within which to serve the said notice. The case of giving notice of intention to appeal and service thereof are so intertwined that if there is no proper service of the said notice then no proper notice of intention to appeal is before the court. By Legal Notice No.11 of 1998 R41 of the Court of Appeal rules was amended to read that the said court may in its discretion entertain an application for stay of execution or extension of time for the doing any act authorised or required by those rules, notwithstanding the fact that no application has been made in the first instance to the superior court. My reading of this amendment would mean that the superior court has jurisdiction to entertain an application for extension of time for service of the notice of intention to appeal.

In the end I find that I have jurisdiction to grant this application which I hereby do.

I extend the time to serve the notice of appeal by 14 days from the date hereof. The applicant shall however pay costs of this application.

Dated and delivered at Nairobi this 14th day of May, 1998

A MBOGHOLI MSAGHA

JUDGE

Kyalo for 1st Respondent

Mr Mbugua for Akhaabi for applicant