

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OWUOR J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 169 OF 1998

BETWEEN

REUBEN NJUGUNANYUMU.....APPLICANT

AND

NELLY WAGIO NJUGUNA.....RESPONDENT

**(Application for extension of time to file Record of
Appeal from a Ruling of the High Court of Kenya at
Nairobi (Mr. Justice Githinji) dated 17th March,1997
in
H.C. SUCCESSION NO. 513 OF 1992)**

RULING

While in the process of canvassing a Notice of Motion brought by the applicant under Rule 9 of the Courts Rules for extension of time to file a record of appeal out of time, Mr. Katwa now applies to withdraw the same purportedly under Rule 93. He has made no indication to the Court as to why he wishes to withdraw the application. Nor did Mr. Kiage appearing for the Respondent demand from him the reason why he was withdrawing the application. I have noted that the litigation in respect of which the application and indeed the intended appeal arise from, is a very unpalatable litigation going on between two very close members of a family, namely a father-in-law and a daughter-in-law . Rule 93 as contended by Mr Kiage applies to appeals, it clearly lays out what an appellant should do when desirous of terminating his appeal. If the opposing party is agreeable a consent letter is then filed. If on the other hand he meets with opposition then an application is made in court before the conclusion of the hearing of the appeal.

There are provisions not made in respect of applications before the court I agree with Mr. Kiage that in the absence of similar provisions in respect of withdrawing of application in this Court's Rules an order in terms of Rule 93 is not available to the applicant. Nor is the same available to the applicant pursuant to section of Cap. 21 as contended by Mr. Katwa. That notwithstanding I am satisfied that in this case where Mr. Kiage has not objected to the withdrawal of the application and I can find no particular reason to stop me from exercising my discretion in favour of the applicant. I can and do hereby grant leave for the application to be withdrawn in terms of rule (3) of the Courts Rules. The Respondent shall have costs of the application.

Dated and delivered at Nairobi this 22nd day of January,

E. OWUOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR