



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAKURU**  
**(Coram: Gicheru, J.A. (IN CHAMBERS))**  
**CIVIL APPLICATION NO. NAI. 316 OF 1998**  
**BETWEEN**

**KIMITI OLE SHUNKUR.....APPLICANT**

**AND**

**1. ZAKAYO MALAKWEN NGELECHE**

**2. DAVID K. MONYINGISI**

**3. DANIEL MORGO.....RESPONDENTS**

**(Application for extension of time to file the Notice of  
Appeal and record of appeal out of time in an intended  
appeal from the judgment of the High Court of Kenya at  
Nakuru (Rimita, J.) dated 21st November, 1995**

**in**

**H.C.C.C. NO. 486 OF 1994)**

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**RULING**

In this application, the applicant has sought extension of time within which to lodge and serve the notice and record of appeal. The applicant's original appeal NO. 15 of 1996 was struck out by this Court on 9th July, 1997 for the reason that there was no leave to appeal. According to the applicant, he was not informed of the outcome of his appeal by his then counsel and in March, 1998 he instructed his present advocate to peruse the record of his said appeal in this Court and it was subsequent thereafter that he was informed that that appeal was struck out for the reason mentioned above. Application for leave to appeal was made on 6th May, 1998 and the same was granted on 14th July, 1998. The present application was made on 20th November, 1998.

The subject-matter of the applicant's intended appeal is his land parcel NO. Narok/Cis-Mara/Ololulunga/215 measuring approximately 578.7 hectares. According to the respondents, this land has been sub-divided and titles issued pursuant to a consent order made in the superior court in the Nakuru High Court Civil Suit NO. 486 of 1994. That consent order was the subject of an application by the applicant herein to have it set aside which application was rejected by the superior court on 21st

November, 1995. Pursuant to that rejection, the applicant herein appealed to this Court but his appeal was struck out as is mentioned earlier in this ruling.

Mr. Konosi for the respondents while opposing this application has submitted that there is no likelihood that the applicant's intended appeal has any chance of success at all for the reason that following the consent order in the superior court the applicant's conduct was in consonant with that order. According to counsel therefore, the applicant's subsequent application to have that order set aside was an afterthought. In the conjuncture, it is not for me as a single judge of this Court to discuss the merits or demerits of the applicant's intended appeal. But what strikes me in this application is the largeness of the land the subject-matter of the applicant's intended appeal. Whereas I agree with Mr. Konosi that litigation must come to an end and therefore I should in this matter reject the applicant's application, the mere size of the applicant's parcel of land which measures approximately 578.7 hectares constrains me in view of the material available in the record of this application to exercise my discretion under **rule 4** of the Court of Appeal Rules in favour of the applicant so as to afford him opportunity to litigate his grievances in the Court of last resort in this country. Accordingly, I grant the applicant's application so that the time for lodging his notice of appeal is extended by 7 days from today's date and the time for lodging the record of appeal is extended by 30 days from the date of lodging his notice of appeal within the extended time.

The costs occasioned by this application assessed at K.Shs. 3,000/- are awarded and payable to the respondents by the applicant within the next 30 days failing which execution to issue.

Dated and delivered at Nakuru this 26th day of February, 1999.

J.E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR