



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI**

CIVIL APPLICATION NO. NAI 242 OF 1998

JOHN KIMANI

NGANGA.....
.....
.....**APPLICANT**

VERSUS

STEPHEN GITAU

KIMANI.....
.....
.....**RESPONDENT**

**(An application for extension of time to lodge a record
of appeal out of time in an intended appeal from a
judgment and order of the High Court (Mr. Amin J)
dated 24/7/1997
in
H.C.C.A. NO. 352 OF 1994)

RULING

Two courts below have ruled that the applicant here, **Mr. John Kimani Ng'ang'a**, is not entitled to any special preference with regard to inheritance of plot KIGANJO/MURATI/T.337 since his father died intestate and that under the law relating to intestacy the lands left by the deceased father of the applicant be divided equally between the tMwro. hSooulsoemso.n Wamwayi, then the Chief Magistrate at Kiambu so ruled. The applicant appealed against that judgment, delivered on 31st October, 1994 and the superior court (Sheikh Amin, J) dismissed his appeal on 24th July, 1997.

The applicant says that he obtained copies of proceedings and judgment within about a month of the date of judgment. I note that the judgment and proceedings were certified on 3rd October, 1997.

There is evidence before me of a notice of appeal having been lodged on the 12th day of August, 1997, that is some five days out of time and there is no extension of time granted for lodgment of the notice of appeal out of time. This application is therefore a non-starter.

The applicant's main complaint is that the Chief Magistrate had no jurisdiction to set aside the consent

order recorded on 24th August, 1993. This may well be an arguable complaint. I will say no more.

But the application before me, as I have pointed out, is a non-starter. I would be exercising my jurisdiction to extend time in futility. The applicant is acting in person and therefore instead of striking out the application I order that the applicant do file an amended notice of motion seeking extension of time to lodge his notice of appeal five days out of time, by way of adding such a prayer to the present application. The other factor I would like to go into is the truth or otherwise of the applicant's statement that he was in Germany soon after he was notified of the availability of the copies of proceedings and judgment. He should prove this fact by stamps on his passport which may prove his visit to Germany.

After the applicant lodges his amended notice of motion and files a further affidavit to prove his absence from Kenya, I will hear this application further. I reserve costs of this application.

Dated and delivered at Nairobi this 11th day of June,

1999.

A.B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.