



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: SHAH J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI. 86 OF 1999  
BETWEEN**

**STANLEY**

**NJOROGE.....APPLICANT**

**AND**

**1. JAMES WAITHAKA KAMAU**

**2. KARANJA KAMAU**

**3. KINUUGI KAMAU**

**4. NDUNGU**

**CHEGE.....RESPONDENT**

**(An application for extension of time to file record of  
appeal out of time in an intended decree of the High  
Court of Kenya (Mr. Justice Aganyanya) dated 11th March, 1998**

**in**

**H.C.C.C. NO. 6656 OF 1991)**

**RULING**

On 11th March, 1998 the superior court (Aganyanya, J) ordered eviction of the applicant Stanley Njoroge from a parcel of land known as LOC. 3/KARIUA/385 (hereinafter could "the suit land"). The suit land has had a long history of litigation which I need not concern myself with.

I am told that the applicant's counsel lodged his notice of appeal on 25th March, 1998 and applied for copies of proceedings and judgment during the prescribed period and that the said copies were available for collection on 17th November, 1998. If such was the case the intended appeal ought to have been filed on or before 11th February, 1999, not counting the Christmas vacation period.

The applicant did not file the record of appeal in time. He says that he was attacked by acute Phumatoid (sic) Arthritis and was therefore hospitalized for a long time. The other reason he gives for the delay is that he was in financial difficulties and could not pay for the services of his advocates. The

financial difficulties, he says, arose as a result of paying hospital bills.

Mr. Ngani for the respondent opposes the application based on the grounds shown in the affidavit of Mr. B.W. Kamunge. Mr. Kamunge says in his affidavit that the 'inordinate' delay in filing the appeal has not been explained and that neither the period of hospitalization nor the hospital has been indicated probably for fear of verification.

The applicant admittedly is an old man and is aggrieved by the decision of the superior court which declared him a trespasser on the suit land and ordered his eviction therefrom. I am unable to say that the intended appeal is unarguable. It can be gleaned from the judgment of the superior court that the applicant has been in occupation of the suit land for a long time.

I am aware of the fact that rule 4 of the Rules of this Court gives me almost unfettered discretion to extend time as sought but subject to interest of both parties. I note that the applicant has not disclosed which hospital he was in or for how long. Mr. Muli, the applicant, stated that these particulars were not given because of the urgency of the matter. That is not a convincing explanation. It would have taken only mere paragraph in the applicant's affidavit to show which hospital he was in and for how long.

The real reason, it seems to me, for the delay, centers around the applicant's financial difficulties. He obviously would want to do everything possible to continue staying on the land from where he is ordered to be evicted.

This application was lodged on 20th April, 1999 some two months and nine days after expiry of time limited to lodge the record of appeal. The question that I ask myself is: is the delay so inordinate as to disentitle the applicant from having his last say in the last Court of this country? I keep in mind the fact that the applicant is a senior citizen who could well have fallen or taken ill. But the paramount consideration in my mind is that the learned judge actually preferred the evidence of the applicant to that of the respondents', but felt his hands were tied as there could be, he felt, no adverse possession plea.

Rule 4 of the Rules of this Court does not have, any more, the requirement for showing "sufficient reason" It simply says that the court may, on such terms as it thinks just, by order extend the time limited by these Rules. Rules are hand-maids to justice. They are good servants but bad masters. If I dismiss this application a senior citizen will consider that he had not had his last say. I must remember that procedural requirements were designed to further the interests of justice and any consequence which would achieve a contrary result to those interests should be treated with considerable reservation. I know that litigation must end but it ought not to end too abruptly, more so when the subjectmatter in issue is land, disputes relating to which are known to result even in murder. I must of course hasten to add that a land dispute is no magic formula for extension of time. I know how our people feel about land. Money is no acceptable compensation when it comes to tilled land. A man gets attached to his land as time goes by and the land becomes sacrosanct.

The end result is that I exercise (although reluctantly) my discretion to extend the time for lodging the record of appeal. The same must be lodged within the next 30 days. The applicant must of course pay costs of this application to the respondents which costs I assess at Shs.6,000/=. These costs must be paid within the next 30 days failing which execution may issue.

**Dated and delivered at Nairobi this 30th day of**

**September, 1999.**

**A.B. SHAH**

.....

**JUDGE OF APPEAL**

**I certify  
a true copy of the original.**

**that**

**this**

**is**

**DEPUTY REGISTRAR.**