



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM: BOSIRE J.A (IN CHAMBERS))**  
**CRIMINAL APPEAL(APPLICATION) NO.5 OF 1997**

**BETWEEN**

**LUCY MUTHONI MWANGI**

**MERCY NDUTA KARIUKI .....APPLICANTS**

**AND**

**REPUBLIC .....RESPONDENT**

**(Appeal from a conviction, judgment, decree, order, or as the case may be) of the High Court of Kenya at Nairobi (Mr Justice V.V. Patel) dated 27th July 1995**

**in**

**H.C.CR.A. No. 297, 298 of 1995**

\*\*\*\*\*

**R U L I N G**

This is an application for an extension of time within which to lodge an appeal expressed to be brought under rule 4 of the Rules of this Court. The applicants unsuccessfully appealed to the superior court against their respective convictions and sentence imposed on them by the Senior Resident Magistrate's Court at Nairobi for the offence of being in possession of suspected stolen property. They were then represented by an advocate, Mr Ndungi, who has since died. The advocate did not file a notice of appeal to challenge the superior court's decision within the time prescribed under rule 5 of the Court Rules, but did so about 76 days after the decision to be appealed against. The applicants allege that they promptly instructed him to file a notice of appeal declaring their intention to appeal against the superior court's decision but he failed to do so for reasons which they are unaware of. They now apply that the court exercises its discretion and extend the time within which to file the notice of appeal for such period as to include the date their deceased counsel filed the notice of appeal a copy of which is on record.

Miss Kamau, senior state counsel, does not oppose the application, properly so in my view, as the circumstances of this matter clearly show that the applicants may never come to know why their counsel who was duly and promptly instructed by them did not file the notice of appeal timeously. In exercise of my judicial discretion I extend the time within which the notice of appeal in this matter was to be filed for such period as to include 12th October, 1995, when the applicant's counsel filed a notice of appeal and order that that notice be deemed to have been filed on time. Order accordingly.

**Dated and delivered at Nairobi this 14th day of January 1998.**

**S.E.O. BOSIRE**

.....

**JUDGE OF APPEAL**