



**IN THE COURT OF APPEAL**  
**AT NYERI**  
**(Coram: Gicheru, J.A. (IN CHAMBERS))**  
**CIVIL APPLICATION NO. NAI. 136 OF 1998 (NYR. 11/98)**  
**BETWEEN**

**JOSEPH LIMA & 86 OTHERS.....APPELLANT**

**AND**

**ANN MERZ.....RESPONDENT**

**(Application for extension of time to file and serve Notice and record of Appeal in an intended appeal from the Ruling and order of the High Court of Kenya at Meru (Ong'udi, J.)**

**in**

**H.C.C.C. NO. 393 OF 1994)**

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**RULING:**

By a notice of preliminary objection dated and filed in this Court on 23rd October, 1998, the respondent herein indicated that at the hearing of the applicants' application she would object to the same for the reason that it did not indicate the nature of the notice and the record of appeal upon which the discretion of this Court under rule 4 of the Court of Appeal Rules may be exercised and that the said application was an abuse of the process of this Court and was calculated to delay justice for the respondent in the Meru High Court Civil Case NO. 392 of 1994.

When this application came up for hearing on 27th October, 1998, counsel for the respondent, Mr. Mwenesi, urged the respondent's preliminary objection in his response to the submission of counsel for the applicants, Mr. Kariuki, the thrust of which was that the applicants were trifling with this Court as the matter intended to be appealed against concerned the exercise of discretion by the superior court in striking out the applicants' suit for being frivolous and an abuse of the process of that court. According to counsel, such a matter was not subject to an application such as the present one as the applicants' intended appeal was not arguable.

The applicants' original appeal NO. 291 of 1996 was struck out by this Court on 12th May, 1998 for the reason that the record of that appeal did not contain a master roll which was tendered in evidence in the superior court in breach of rule 85(1)(f) of the Court of Appeal Rules. On the same day, the applicants filed the present application seeking extension of time to lodge the notice and the record of appeal having now found the omitted master roll in their original appeal referred to above.

Without doubt the applicants' application was filed in this Court without delay on finding the document that had resulted in their original appeal being struck out. Whether or not their intended appeal is arguable may not be for me as of now to decide and in any event there is no material in the record of this application upon which it can be said that the applicants in making this application are trifling with this Court. I cannot with justification deny them the opportunity to ventilate their dissatisfaction with the decision of the superior court in this Court in the circumstances of this application. In the result and in the exercise of my discretion - under rule 4, supra, I grant the applicants' application and extend time within which to lodge their notice of appeal by 7 days from today's date and thereafter they are to lodge their record of appeal within 15 days from the date of lodging their notice of appeal.

The respondent shall have the costs of this application assessed at KShs. 3,000/- payable within the next

30 days from the date hereof failing which execution to issue.

**Dated and delivered at Nyeri this 29th day of October, 1998.**

**J.E. GICHERU**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**