

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU

CORAM: TUNOI, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 257 OF 1996

BETWEEN

MARGARET APIYO APPLICANT

AND

JOTHAM CHEMWA MATAYO RESPONDENT

**(Application for extension of time to file notice of
appeal and record of appeal out of time as a pauper
in an intended appeal from a judgment of the High
Court of Kenya at Kakamega (Tanui) dated 13th
December, 1995**

in

H.C.C.A. NO. 33 OF 1994)

R U L I N G

The applicant must be congratulated for having gallantly fought great battles single-handedly to regain her land. The delay involved herein is about six months, which in my view, is not too inordinate where land dispute is the subject matter. Moreover, the files in respect of the suit are many and the exhibits scattered, probably deliberately, as one of the parties to the suit worked in the Court Registry at Kakamega. All these go to a great length in explaining the difficulty in the preparation of the documents.

True, ignorance of the law is no excuse but the particular circumstances of this case do militate my discretion in favour of the applicant. She is old and illiterate. She is aggrieved.

The respondent is smart and educated. Fraud is alleged. Blame for tardiness is placed squarely at our door. Where will the scale of justice tilt towards? I grant her extension of time. Leave is granted to her to file her Notice of Appeal out of time and within 14 days hereof. It shall be served on the respondent(s) within the same period. The record of appeal shall be lodged in Court within 60 days thereafter. Costs of this application to be in the intended appeal.

Dated and delivered at Kisumu this 13th day of March, 1997.

P. K. TUNOI

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JUDGE OF APPEAL

FURTHER ORDER

I make a further order, the applicant is permitted to appeal as a poor person and for this reason the record

of appeal need not be in the conventional form.

Dated and delivered at Kisumu this 13th day of March, 1997.

P. K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR