



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(Coram: Gicheru, J.A. (IN CHAMBERS))  
CIVIL APPLICATION NO. NAI. 325 OF 1996

BETWEEN

GIBSON KABUTHIA.....APPLICANT

AND

KIMANI MUTHUITA (THRO' AD LITEM

JOE CHEGE.....RESPONDENT

(An application for extension of time to file Notice of  
Appeal and Record of Appeal out of time in an intended  
appeal from a judgment and decree of the High Court of Kenya  
at Nyeri (Lady Justice Ang'awa) dated 7th December, 1993

in

H.C.C.C. NO. 119 OF 1980)

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**RULING**

The applicant's original Civil Appeal NO. 70 of 1996 was on 17th October, 1996 struck out by this Court for noncompliance with *rule 85(1)(f)* of the Rules of this Court.

Within 14 days thereafter, the applicant lodged the present application seeking from this Court extension of time to file and serve the Notice and record of appeal upon such terms as are fit and just. According to counsel for the applicant, the non-compliance with *rule 85(1)(f)* of the aforesaid Rules was inadvertent on his part and since the subject-matter of the intended appeal concerns land, it is proper that the disputants thereto should be accorded opportunity to ventilate their grievances to this Court. Considering the promptitude with which this application was made, counsel urged that the same be granted.

Counsel for the respondent, however, while having no quarrel with the diligence with which the applicant made his application, contended that the applicant's intended appeal had no chance of success as the transaction concerning the land in question required the consent of the relevant Land Control Board which consent was not obtained within the prescribed time. To counsel therefore, that transaction was void for all purposes and to grant this application would be an exercise in futility amounting to abuse of the process of this Court. According to him, the applicant's application was only fit for rejection with costs.

The force of the argument of counsel for the respondent cannot be underrated. Indeed, from the annexures to the applicant's supporting affidavit, it may well be that his intended appeal has no chance of success but to deny him opportunity of being heard in this Court over what he may be considering to be a legitimate grievance which in the circumstances may or may not be frivolous may amount to driving him out of the judgment seat. It may well be that in the interests of both parties to the dispute the same should be fully litigated and finally laid to rest in this Court.

Being conscious of the subject-matter to the intended appeal, I would in these circumstances grant the applicant's application so that the time for lodging his Notice of Appeal is extended by 7 days from

today's date and the time for lodging the record of appeal is extended by 15 days from the date of lodging the Notice of Appeal within the extended time. The costs occasioned by this application assessed at KShs. 2,000/- are awarded to the respondent and shall be paid to him within the next 30 days failing which execution in respect thereof shall follow.

Dated and delivered at Nyeri this 16th day of May, 1997.

J.E. GICHERU .....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR