



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLICATION NO. NAI. 83 OF 1997 (UR.38/97)

1. ABERCROMBIE & KENT LIMITED.....1ST APPLICANT

2. ILKAREKESHE GROUP TRUST

REGISTERED TRUSTEES.....2ND APPLICANT

VERSUS

OLOOLOLO GAME RANCH LIMITED.....RESPONDENT

(In the matter of an intended appeal from the Ruling and  
order  
of the High Court of Kenya at Nairobi (Khamoni, J.)  
dated 27th February, 1996  
in  
H.C.C.C. NO. 3457 OF 1995)

\*\*\*\*\*

### RULING

By a Notice of Preliminary objection dated 21st July, 1997 and filed in this Court on 23rd instant, the respondent in the present application raised two preliminary objections the first of which was that the said application was frivolous and vexatious and was calculated to delay the course of justice and final determination of H.C.C.C. NO. 3457 OF 1995 and the second of which was that this Court had no jurisdiction under its Rules unless and until the procedure prescribed by **section 7 of the Appellate Jurisdiction Act**, Chapter 9 of the Laws of Kenya, hereinafter referred to as the Act, has been exhausted which the applicants had not done

The applicants' application is made under **rule 4** of the Rules of this Court and principally seeks extension of time for lodging the notice and record of appeal. The submission of counsel for the respondent is that the discretion of the superior court in the matter intended to be appealed from is unchallengeable and that therefore the applicants' application is frivolous and vexatious. Besides, the relevant provisions of **section 7** of the Act read together with **rule 41** of the Rules of this Court, hereinafter called the Rules, mandated the applicants to first make their application for extension of time for giving notice of their intention to appeal to the superior court failure to which an essential step in the proceedings will not have been taken. According to counsel therefore, the respondent's preliminary objection should be upheld.

**Section 7** of the Act is in the following terms:

"7. The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of warrant for execution of that sentence."

**Rule 41** of the Rules stipulates that:

"41. Whenever application may be made either to the Court or to a superior court, it shall in the first instance be made to the superior court: Provided that in any criminal matter the Court may in its discretion, on application or of its own motion, give leave to appeal or extend the time for the doing of any act, notwithstanding the fact that no application has been made to the superior court."

Whereas applications for leave to appeal or for a certificate that the case is fit for appeal mentioned in **section 7** of the Act are adverted to in **rules 38(1)(a) and 39(a)** which together with **rule 41**, supra, are comprised in Part II of the Rules which latter relates generally to applications and the procedure in connection therewith, there is no reference in that **Part** of the Rules to an application for extension of time for giving notice of intention to appeal. It does not therefore appear to me that the power of this Court to extend time under **rule 4** of the Rules is affected by rule 41 of the Rules. Hence, regarding the first preliminary objection, it does not seem to me that the issue of whether or not the discretion of the superior court in the matter intended to be appealed from is unchallengeable lies within the purview of the applicants' application: and as I think that the applicants' present application under rule 4 of the Rules is properly before the Court, I reject the respondent's preliminary objections and direct that the applicants' application proceed to hearing forthwith.

Dated and delivered at Nairobi this 30th day of July, 1997.

J.E. GICHERU

.....

JUDGE OF APPEAL

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

**DEPUTY REGISTRAR**