



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

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

CIVIL APPLICATION NO. NAI. 31 OF 1997

BETWEEN

MULEMBE FARM LIMITED SIMEON MUSUNGU ..... APPLICANTS

AND

JOHN B. MASIKA

WANYAMA BIKETI

SIMEON MASIKA

YOHANA MULAMA ..... RESPONDENTS

**(Application for extension of time to file notice of appeal  
and an appeal out of time in an intended from a judgment  
of the High Court of Kenya at Nakuru (Tunoi J) dated 4th  
October, 1996**

**in**

**H.C.C.C. NO. 60 OF 1978)**

\*\*\*\*\*

**R U L I N G**

This is an application under rule 4 of the Rules of this Court seeking extension of time for filing a notice of appeal and the record of appeal out of time. It is based on the sole ground that no notice was served upon the applicants or their advocates of the date of delivery of the judgment. On the material before me, I am not satisfied that this is so. The judge wrote a letter dated 26th September, 1996 addressed, inter alia, to Mr. Kiangoi who was one of the advocates who conducted and concluded the case on behalf of the applicants. There is no affidavit from him to say that he was not served. The Deputy Registrar who delivered the judgment has recorded that all parties were present.

It is deponed in the affidavit on behalf of the Respondents that the judgment intended to be appealed against has been enforced, a sub-division made and members are settled in terms of the judgment. The applicants knew of the delivery of judgment at the latest by 22nd November, 1996. Yet this application was not filed until 4th February, 1997, more than two months later. This delay has not been satisfactorily accounted for. In all the circumstances, I am not persuaded that this is a proper case for the exercise of my discretion to grant the extension. Accordingly, the application is dismissed with costs.

**Dated and delivered at Nakuru this 23rd day of September, 1997.**

**A. A. LAKHA**

-----

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**