



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Gicheru, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 127 OF 1997

BETWEEN

EVAN NGUGI KINYANJUI.....APPLICANT

AND

1. PHILLIS MBUTE

2. MARARO KAMAU

3. JAMES MBUGUA MBUTE

4. MUIRURI KAMAU

5. CHARLES MUITA KAMAU

6. ESTHER NYAMBURA KAMAU.....RESPONDENTS

(Application for extension of time in an intended appeal from a Ruling of the High Court of Kenya at Nairobi (O'Kubasu, J.) dated 7th June, 1993 in H.C.C.C. NO. 3788 OF 1988)

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RULING

In an application in the superior court dated 4th November, 1996 the applicant herein sought orders inter alia that he be substituted in place of his deceased father, Kinyanjui Kamau, as the defendant in that court's Civil Case NO. 3758 of 1988 and that he be granted leave to appeal out of time against the decision in that case dated 7th June, 1993. That application was on 19th February, 1997 dismissed with costs to the respondents herein with the applicant being required to make the necessary application to this Court. On 30th May, 1997 he made the present application seeking leave of this Court to file a fresh Notice of Appeal and the record of appeal out of time against the aforementioned decision and that he be at liberty to apply for further orders and/or directions as this Court may deem fit and just to grant. From his affidavit and the annexures thereto in support of this application, it does not appear to me that he has sought and obtained substitution in place of his deceased father who had timeously lodged a Notice of Appeal against the decision referred to above on 18th June, 1993. In the result, it seems to me that he lacks capacity to make the present application. The same is therefore incompetent **and is struck out with costs to the respondents.**

Dated and delivered at Nairobi this 13th day of October, 1997.

J.E. GICHERU

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**