

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

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

**CIVIL APPLICATION NO. NAI 157 OF 1997 (NYR 8/98)
BETWEEN**

JOHN NJIRU MUYA.....APPLICANT

AND

1. NGUU MUYA

2. DANIEL MUKUNYA.....RESPONDENTS

**(Application for extension of time within which to file
record of appeal from a ruling and order of the High
Court of Kenya at Nyeri (Mr. Justice J.A. Osiemo)
dated 14th November, 1996**

in

H.C.C.A. NO. 102 OF 1993)

RULING

It is indeed amazing that Mr. Kathungu was not aware of the well known proviso to rule 81 of the Rules of this Court Mr. Kariithi has correctly pointed out that Mr. Kathungu ought to have known of the said proviso. In fact at the time this application was filed the time to file the appeal itself had not run out. Instead of filing the appeal the applicant filed this application.

Whilst I deprecate the fact that an advocate does not read the rules I cannot allow the innocent (rule-wise) layman applicant to suffer.

Therefore, in my discretion, I allow this application. The record of appeal, which should include a copy of the notice of appeal dated 18th November, 1996 filed on 21st November, 1996 will form part of the record together with a copy of this ruling.

Mr. Kariithi raised the issue of merits. As a single judge I would not want to go into the merits of the appeal as that is a pressure of the full court on appeal. The record of appeal shall be filed within the next 21 days. The respondents will have costs of this application which I assess at shs.4000/- is also a pre-condition to filing of record of appeal.

Dated and delivered at Nyeri this 30th day of October, 1997.

A. B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR