

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: GICHERU, J.A (IN CHAMBERS)

CIVIL APPLICATION NO. NAI 329 OF 1995 (NYR 22A/95)

KITHAKA NTHAKANIO.....APPLICANT

AND

TAHTHI NTHAKANIO.....RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Meru (Justice S. O. Oguk) dated 12th July, 1990

in

H.C.C.A. NO. 97 OF 1988)

RULING

The applicant's original appeal to this Court was struck out on 23rd October, 1995 for the reason that its record did not contain a certified copy of the decree appealed against as is required by rule 85(1(h) of the Rules of this Court. On 7th November, 1995 he filed the present application seeking extension of time within which to lodge the record of appeal which now he says would contain the requisite certified copy of the decree appealed against. He, however, did not seek extension of time within which to lodge the Notice of Appeal the original of which was struck out with his original appeal to this Court. On 17th May, 1996 he sought and obtained leave of this Court to amend his Notice of Motion so as to include a prayer for extension of time within which to lodge the requisite Notice of Appeal. He on the same day filed the amended Notice of Motion which now included a prayer for extension of time within which to lodge the Notice of Appeal. That amended Notice of Motion came up for hearing on 31st July, 1996 and it would appear to me that the subject-matter of the dispute between the applicant and the respondent who are blood brothers is an 8 acres piece of land which originally belonged to their grandmother. Litigation relating to this dispute seems to have commenced before the Senior Resident Magistrate's Court at Embu which referred the same to the arbitration of elders under the chairmanship of a District Officer. An award which was unfavourable to the applicant was filed in that court and his application to have it set aside was unsuccessful. He therefore appealed to the High Court at Meru against the refusal to set aside that award and there again his appeal was unsuccessful. He appealed to this Court and his appeal was struck out as is set out above.

It is not clear whether or not after the applicant's appeal in the High Court at Meru was dismissed judgment was entered in terms of the award notwithstanding that the respondent proceeded as if that was so and acquired 3 acres of the land in dispute leaving about 5 acres of the said land to the applicant. The record of this application is deficient in this regard. Nevertheless, as the applicant has not been indolent in presenting his application for extension of time within which to lodge the Notice of Appeal and the record of appeal, in order to forestall any possible miscarriage of justice over the disputed land, I would exercise my discretion under rule 4 of the Rules of this Court in favour of the applicant and grant the prayers sought in the applicant's Notice of Motion and order that the time for lodging the requisite Notice of Appeal be and is hereby extended by 10 days from today's date and on lodging the same within the extended time, the time for lodging the record of appeal be extended by 30 days from the date of lodging the said Notice of Appeal. The costs occasioned by this application shall be in the intended appeal.

Dated and delivered at Nairobi this 2nd day of August, 1996.

J. E. GICHERU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR