

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI
CORAM: TUNOI, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI 71 OF 1994

BETWEEN
FREDRICK G.K. WAITHAKA APPLICANT
AND
THUO KAMAU
DAVID NJUGUNA THUORESPONDENTS

(Application for extension of time to file an appeal from
a judgment of the High Court of Kenya at Nairobi
(Justice Mbiti) dated 6th June, 1991
in
H.C.C.C. NO. 627 OF 1987(OS))

RULING

This is an application for extension of time to file an intended appeal against the judgment of the superior court (Mbiti J) dated 6th June, 1991. Under rule 4 of the Court of Appeal Rules, this Court is empowered to enlarge time on any grounds, it seems just. Thus, there is conferred upon the court unlimited discretion to extend time subject only to the requirement of justice. I will now attempt to apply this principle so far as this case is concerned.

The subject matter of the suit is the superior court and in the intended appeal is land which has been divested of the applicant under the doctrine of adverse possession. It is only fair and just that he should be allowed to exhaust all the legal avenues open to him before a final decision is made.

It is common ground that there has been an inordinate delay of well nigh three years in instituting the appeal. The fact of the delay has been placed squarely at the door of the applicant's counsel. The applicant, too, is partly guilty of indolence. However, it is now settled that an appeal should not be negated by the mistakes of counsel.

In all the circumstances, I allow this application and extend time for filing the appeal by 14 days from today. The costs of this application will be the respondents' costs in the appeal in any event.

Dated and delivered at Nairobi this 17th day of November, 1994.

P. K. TUNOI
JUDGE OF APPEAL

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

DEPUTY REGISTRAR

