



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

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

(In the matter of an intended appeal)

CIVIL APPLICATION NO. NAI. 179 OF 1988
BETWEEN

OMARI KIPKEMEI SING'OEI & 5 OTHERS.....APPLICANTS

AND

ABIGAEL JELAGAT ROTICH HURT.....RESPONDENT

(Application for extension of time in an appeal from a j

udgment and decree of the High Court of Kenya at Nairobi

(Sachdeva, J.) dated the 23rd July, 1985

in

H.C.C.C. NO. 3096 OF 1984)

RULING:

In this application, the applicants have sought an order that the time for the filing and service of the applicants' record of appeal be extended by 7 days from the date of making such order by this court. It is supported by the annexed affidavit of Joseph Wandabwa sworn on his own behalf and on behalf of the other applicants.

According to this affidavit, Notice of Appeal was lodged on 2nd August, 1985. Certified copies of the proceedings were supplied to the applicants on 15th April, 1987. The deponent was the instructing client to the applicants' counsel. He claims to be hypertensive and that in the months of June, and July, 1987 he suffered acute hypertension. As he and the other applicants live in Kitali, he was unable to travel to Nairobi to instruct their counsel. Towards the end of the year 1987 he learnt that fees for the preparation of the record of appeal and for filing the appeal had to be paid. Efforts were then made to look for the necessary funds. During the month of March, 1988 these funds were available. Their counsel was duly instructed. Thereafter, due to their counsel's illness between the months of March and August, 1988,

the record of appeal was not prepared until sometime in September, 1988. This application was filed on 23rd November, 1988. For the foregoing reasons, the applicants pray for the order set out above.

Counsel for the respondent opposed this application for the insufficiency of the reasons for the delay. He argued that the periods between 15th April, 1987 and the month of March, 1988 and between August and November, 1988 were unexplained. Besides, according to him, the applicants had not demonstrated that they had an arguable appeal.

No doubt, save for the months of June and July, 1987 and the period between the months of March and August, 1988, the applicants' reasons for the delay between 15th April, 1987 and the date of filing this application are insufficient. From exhibit JW - 1 referred to in the applicants' supporting affidavit, the subject matter of the intended appeal is land held by several persons as tenants in common in equal shares.

As was observed by Nyarangi, J.A. in the case of **Mangoli Wamalwa Machine v. Nafula Mbingu Mukhwana**, Civil Application NO. NAI. 128 of 1987 (KMU 25/87) (unreported):

"The practice of this court is that with regard to land matters, wherever it is just and reasonably possible, an appeal should be filed in order for this court to make a final determination on such land disputes."

A perusal of exhibit JW - 1 and the case of **D.T. Dobie & Company (Kenya) Limited v. Joseph Mbaria Muchina and Another**, Civil Appeal NO. 37 of 1978 (unreported) indicate that it is just that the applicants should be allowed to file their intended appeal. they have an arguable appeal.

In the exercise of my judicial discretion, I accordingly allow the applicants' application and order that the time for the filing and service of the applicants' record of appeal be extended by 7 days from today's date.

Counsel for the applicants quite rightly conceded that the applicants could not resist the award of costs of this application to the respondent. The same are awarded to the respondent in any event.

Dated and delivered at Nairobi this 6th day of July, 1990.

J.E. GICHERU

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JUDGE OF APPEAL