



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM:NYARANGI, PLATT & GACHUHI JJA)**

**CIVIL APPLICATION NO NAI 27 OF 1987 & 120 OF 1986**

**GATUMU .....APPELLANTS**

**VERSUS**

**KIMANI.....RESPONDENT**

**RULING**

October 27, 1987 **Nyarangi, Platt & Gachuhi JJA** delivered the following Ruling.

These two applications were consolidated for the purpose of the hearing. In Civil Application NAI 120 of 1986, the applicant is asking for the notice of appeal to be struck out while the applicant in Civil Application NAI 27 of 1987 is asking for a further extension of time within which to file the record of appeal.

It has been correctly submitted that in May 1986 the intended appellant filed an application for extension of time. That application (NAI 49 of 1985) came before a single judge of this court and it was allowed. The applicant was granted an extension of 30 days to file the record of appeal.

It has been conceded in these applications that there was an attempt of settlement commenced soon after the granting the order for extension of time. Counsel for the respondent contended that though there were negotiations for settlement, that fact should not have prevented the appellant from filing the record of appeal within the time allowed by the court.

The offer for settlement originated from the respondent in Application NAI 27/87. It would have been pointless for the appellant to file the appeal having been confronted with the offer for settlement, which, if it had materialized the appeal would not have been filed. Costs and time for the parties would have been saved. It is the same respondent who resited from the settlement after a prolonged period of time. The court granted further time to the parties to explore and verify the terms of settlement which effort failed in the end.

The intended appellant stated through her advocate that she was ready to file the appeal before the offer was made but stopped to file it so as not to frustrate the possibility of settlement. We think that the stand taken by applicant in NAI 27/87 was reasonable in the circumstance. The parties are somehow related and the dispute is about a piece of land which matter is sensitive. This court has affirmed the decision in *John Kuria v Kalen Wahito* CA 19/83 (unreported) that appeals involving land disputes should be allowed to be heard by this court for determination on merit. The intended appellant could not be held as solely responsible for the delay in filing of the record of appeal. The court finds that the delay was caused by the respondent. It is proper in our view, and we so hold, to allow the application for extension of time within which to file the record of appeal.

The respondent's application for striking out the notice of appeal within 30 days form the date of this order. There will be no order for costs in both applications.

**October 27, 1987**

**NYARANGI, PLATT & GACHUHI JJA**