



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CIVIL APPLICATION NO NAI 77 OF 1987**

**MURUARU KIBUKU .....APPELLANTS**

**VERSUS**

**JAMES MWANGI KAMAU & NAFTARY MWANGI.....RESPONDENT**

**JUDGMENT**

In this Court's Civil Application No 74 of 1985, Platt J A ordered that the intended appeal be filed by the applicant within 30 days from January 29, 1986. No appeal had been filed at the expiration of that period. Some fifteen months after the said order of Platt J A, the applicant now comes to court seeking a further extension of time so he can still file his intended appeal.

In an affidavit sworn on May 11, 1987, the applicant sets out his reasons for failing to file the intended appeal as ordered on January 29, 1986. First, the address that he had given to his advocate was that of his son's employers in Nairobi and his son left those employers so that a letter addressed to him telling him of the order of January 29, 1986 never reached him.

Secondly, on March 15, 1986 he was involved in a road traffic accident in which, he says, he was seriously injured and has been attending hospital regularly at his advanced age of sixty five years. Finally, he says that his then lawyers demanded the sum of Kshs 10,000.00 as balance of their fees before they could release his file and it took him quite some time to raise the money. He therefore seeks a second chance to enable him file his intended appeal.

This application was opposed by counsel for the respondent who appeared though no affidavit in reply was filed. He stated that the order which it is intended to appeal from was based on a plea of res judicata arising out of Thika RMCC 147 of 1975 between the parties herein and concerned the same suit premises and the parties had both been represented by counsel. Though the applicant was involved in an accident the medical report shows that he was expected to be cured within two months. And as regards the claim that applicant's previous advocates demanded payment of fees is no evidence adduced thereof. Consequently, the respondents asked for dismissal of this application.

I have carefully considered this application which was filed into court on May 15, 1987 some fifteen months after applicant was given 30 days within which to lodge his appeal. The applicant's reason for delay are in my view not satisfactory. I therefore refuse the extension sought and dismiss the application with costs.

**Ocober 16, 1987**

**MASIME AG J**