

IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Hancox, J.A. (In Chambers))

CIVIL APPLICATION NO. NAI 23 OF 1986

(In the, matter of an intended appeal)

BETWEEN

MBUTHIA CHARAGU.....APPLICANT

AND

KIARIRI KAGURU.....RESPONDENT

(Application for leave to file a notice of appeal from an order of the High Court of Kenya at Nairobi (Gachuhi/Aganyanya, JJ.) dated-14th October, 1983 in ,High Court Civil Appeal No. 171 of 1977)

RULING

This is a very old land case from Kiambu. Both parties are in person, unrepresented. One is very old and the respondent appears to be blind as well.

Unfortunately the applicant's counsel in the High Court, Mr Kamau, filed the Notice of Appeal which should have been to this Court, in the High Court by mistake, and this was not discovered until it came before Mrs Aluoch J in December, 1985. The high court judgment in this first appeal was dated October 28, 1983. The Notice of Motion for the matter was filed (in the High Court) on January 11, 1984. The only document on this file is an affidavit in support, and a Notice of Motion but both are, indeed, stamped in the High Court registry on January 11, 1984. This supports this applicant's story.

The applicant says the time lapse was not his fault, as he had not been informed of the date of the judgement of the High Court and did not know of it till January 6, 1984. Thereafter, I am satisfied, the delay was not the applicant's fault but that of his former advocate. The actual delay from the date when the Notice of Appeal was due (November 11, 1983) is thus exactly 2 months.

I have looked at both the proceedings before Mr O'Kubasu, Senior Resident Magistrate, as he then was, and the judgment of the High Court. This is a complicated land case and it would be unfortunate if justice was not fully seen to be done in the Court, to which Mr Mbuthia has sought to prefer an appeal. In the circumstances, despite the delay, I propose to exercise my discretion in favour of the applicant and to grant him necessary time to file his Notice of Appeal out of time in this Court.

The order I make is that an extension of time be granted to the applicant to file his Notice of Appeal. He is to file it within seven days in the registry, that is to say by June 12, 1985. In default the Notice of Motion will stand dismissed. I order the costs to go to the respondent in any event. These are fixed at Shs 250.

Dated at Nairobi this 5th day of June, 1986.

A.R.W.HANCOX

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR