



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(Coram: Hancox, J A (In Chambers) CIVIL APPLICATION NO NAI 40 OF 1983**

**(In the matter of an intended appeal)**

**BETWEEN**

**1. CLEOPHAS MASINDE SIMIYU.....APPLICANTS**

**2. KATA BIKETI**

**AND**

**1. MAURICE BARASA WATAMBAMALA**

**2. FRANCIS NYUKURI.....RESPONDENTS**

**3. FRED WAFULA WATAMBAMALA**

**4. ANGARA JUMA WATAMBAMALA**

**(Appeal for extension of time to file notice of appeal in an intended appeal from the judgment of the high court of Kenya at Kakamega (Gicheru, J) dated 8th August, 1983) In**

**HIGH COURT CIVIL CASE NO 14 OF 1982)**

**RULING**

I recognize the force of that which Mr Munikah says, namely that the first appellants, who were the ones who apparently gave the instructions, went out of the country knowing that Judgment was imminent. True, the date was changed to the 8th August, but that does not alter the essential fact in that they had no business to leave their advocates without instructions. Moreover, as Musoke J A said, in NJAGI v MUNYIRI[1975] EA, 179 at p 180, (and as I have had occasion to remark recently, in MUITA NJUGUNA v GITHERE, CIVIL APPEAL NAI 33 OF 1983), a Notice of Appeal is a formal document, simple in terms, and is filed almost as a matter of course. Mr Raballa could have filed one, as a matter of prudence.

That having been said, it cannot be gainsaid that the delay in filing the application for extension is not great, the period expiring on 22nd August and the application being filed on 7th September, some 16 days later. In KAWUKA v KARIM 5 [1937] EACA, 37, for instance, the delay in filing the application was nearly 3 years. Normally, the court will look with little sympathy on an application to extend the time for

filing the Notice of Appeal (as opposed to other more complicated steps), but in this case, mindful as I am of Mr Munikah's plea regarding his clients being kept out of the land, I propose to exercise my discretion under Rule 4 by granting an extension.

Extension is granted until 2nd March to file the Notice of Appeal in this case. The respondents must have the costs of this application. Orders accordingly.

**Dated at Nairobi, this 28th day of February, 1984.**

**A R W HANCOX .....**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**