

IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Law JA (in chambers))

CIVIL APPLICATION NO NAI 25 OF 1978

BETWEEN

NDETI MUTHUKA.....APPLICANT

AND

NDAISI MULUMA.....RESPONDENT

JUDGMENT

This is an application by an intending appellant for an extension of time to enable him to file his intended appeal.

The original suit, which has given rise to this application, was filed in 1973 in a Court of the third class. The applicant lost. He appealed to a subordinate court of the first class. His appeal was dismissed. He then appealed to the High Court, and was again unsuccessful. He now wishes to bring a third appeal to this Court.

In *Sanga v Baya* [1973] EA 312, this Court's predecessor held that the Court of Appeal has no jurisdiction in Kenya to entertain a third appeal.

Effect has now been given to that decision by legislation. The Schedule to the Statute Law (Miscellaneous Amendments) Act 1978 has amended section 71A of Civil procedure Code by adding a new subsection to it.

Section 71A(now section 71A(1)) provides that an appeal shall lie to the High Court from a decree passed by a subordinate court of the first class on an appeal from a subordinate court of the third class. The new subsection (section 71A (2) reads as follows: "An appeal under this section shall be final".

This Court has accordingly been deprived by statute of jurisdiction to entertain a third appeal. It follows that I have no jurisdiction to entertain this application to extend time for filing a third appeal. Having no jurisdiction, no question of any exercise of discretion by me arises. I am accordingly bound to dismiss this application, and I order that it be dismissed, with costs, which with the consent of the advocates concerned in this application, I fix at Shs 150.

Order accordingly.

DATED and delivered at Nairobi 3rd March 1979

E.J.E LAW

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JUDGE OF APPEAL (in chambers)

I certify that this is a true copy of the original

DEPUTY REGISTRAR