



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: TUNOI, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI. 220 OF 2010**

**BETWEEN**

**PETER AMALA MUMIA .....1<sup>ST</sup> APPLICANT**

**CORENEL GERMAN MUMIA .....2<sup>ND</sup> APPLICANT**

**GERALD OYEMBA MUMIA .....3<sup>RD</sup> APPLICANT**

**JOSEPHAT AFUBWA MUMIA .....4<sup>TH</sup> APPLICANT**

**AND**

**MARY ANYANGO AMEKA .....1<sup>ST</sup> RESPONDENT**

**LEVI OMONDI AMEKA .....2<sup>ND</sup> RESPONDENT**

***(Application for extension of time to file and serve notice of appeal, memorandum of appeal and record of appeal from the***

***Ruling and Order of the High Court of Kenya at Kakamega (Chitembwe, J.) dated 12<sup>th</sup> November, 2009***

***in***

***MISC. CIVIL APL. NO. 82 OF 2006)***

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**RULING**

I am asked by this application to exercise my discretion in favour of the applicants and grant them an extension of time within which to lodge an appeal out of time.

The Ruling, the subject matter of the intended appeal, was delivered on 12<sup>th</sup> November, 2009. Being aggrieved by it, the applicants timeously lodged a notice of appeal and petitioned for the copies of proceedings and the ruling. Though these were received in or about March, 2010, no appeal was filed as is mandated by the Rules of the Court.

The main reasons given for the delay are that the Court did not supply the applicants' counsel with the requisite copies of the ruling and judgment on time; and that the applicants did not have any money to instruct counsel to appeal nor money to file appeal. This application was filed on 14<sup>th</sup> September, 2010.

Mr. Akwala, learned counsel for the applicants, has further submitted that the matter in issue in the intended appeal is land, an emotive issue and that the applicants are poor peasants. He has further argued that the intended appeal is arguable and has annexed the draft memorandum of appeal to the application.

Mrs. Ameka, learned counsel for the respondents, has vigorously opposed the application. She has averred that the delay in filing the appeal, which runs to six (6) months, has not been sufficiently explained and that as the parties have been litigating since 1988, it would prejudice the respondents if the dispute is prolonged.

This being a land matter, it would not be in the best interests of justice to deny the applicants a right to appeal on a technicality. The cardinal principle in such matters like this is that justice shall be administered without undue regard to procedural technicalities.

I am satisfied after perusing the draft memorandum of appeal that the intended appeal is arguable and not frivolous at all.

Having regard to the circumstances of this case, I find that there has been adequate and reasonable explanation for delay. Impecuniosity is not unique among peasants.

I exercise my discretion in favour of the applicants and grant the application as prayed. I extend time for filing a notice of appeal by **15 days** from the date of this ruling. The applicants shall file and serve a memorandum of appeal and the record of appeal within 21 days after the service of the notice of appeal.

The respondents are awarded costs of the application which I assess at **Shs.12,000/=**. These shall be paid within 14 days hereof. In default of payment, execution for the costs shall issue.

***Dated and delivered at Kisumu this 17<sup>th</sup> day of March, 2011.***

***P.K. TUNOI***

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***JUDGE OF APPEAL***

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

**DEPUTY REGISTRAR**