



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI

(CORAM: VISRAM, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 71 OF 2010 (NYR. 7/2010)

BETWEEN

MICHAEL WACHIRA GAKUO APPLICANT

AND

ELIZABETH WAMUYU GITHINJI RESPONDENT

(Application for Extension of time to file a notice of appeal and record of appeal out of time in an intended appeal from the ruling and order of the High Court of Kenya at Nyeri (Makhandia, J) dated 22nd July, 2009

In

H.C. Succession Cause No. 244 of 2009)

RULING

This application, made under **rule 4** of the Court of Appeal Rules, for extension of time to file an appeal from the ruling and order of the High Court (Makhandia, J) is premature.

The ruling in the case before the High Court was delivered on 22nd July, 2009, and a notice of appeal was indeed filed within time on 4th August, 2009, and served, also within time, on 6th August, 2009. However, it was then that the applicant realized that his appeal to this Court did not lie as of right, and that he needed leave to appeal. Hence, on 7th September, 2009, he filed an application before the High Court seeking leave to appeal to this Court, out of time. By a ruling dated 27th January, 2010, that Court (Makhandia, J) declined to grant the leave sought. The applicant did not prefer an appeal against that decision, nor applied to this Court under **rule 39** of the Rules of this Court, to seek such leave.

Accordingly, as it now stands, the applicant has no right of appeal before this Court, and, therefore, this application for extension of time to file his appeal is premature, and superfluous, and is accordingly dismissed. It is so ordered.

Dated and delivered at Nyeri this 28th day of October, 2011.

ALNASHIR VISRAM

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.