



IN THE COURT OF APPEAL OF KENYA
AT NYERI
CIVIL APPLICATION 225 OF 2009

GEOFFREY MWANGI WACHIRAAPPLICANT

VERSUS

JOSEPH MWANGI IRUNGU (DCD)RESPONDENT
(SUBSTITUTED BY SUSAN WAMUYU MWANGI)

(Application for extension of time for to file notice of appeal out of time in the in an intended appeal against the ruling and order of (P.K. Tunoi, J.) dated 3rd December, 1992

in

H.C.C.C. No. 2 of 1990)

RULING

On the 12th June, 2009 the applicant, *Geoffrey Mwangi Wachira* lost *Civil Appeal No. 123 of 2003* which he had filed in this Court challenging certain orders made with regard to some land known as *Iriaini/Gatundu/119*. One *Joseph Mwangi Irungu*, now long deceased had sued the appellant claiming ownership of the land. The suit which was lodged in the High Court at Nyeri, was not heard by the court because the parties consented to the suit being referred to arbitration by a panel of elders. The elders heard the dispute and made their award. The applicant lost before the elders and it appears the applicant applied to the High Court to set aside of the award. *Tunoi J*, as he then, was dismissed the application to set aside the award; that was on the 3rd December, 1992; that is some eighteen years ago. The appellant, it would appear, filed a notice of appeal against the decision of the Judge which dismissed his application to set aside the award. But he filed no appeal and in the course of events, the High Court entered judgment in terms of the elders' award. The deceased *Joseph Mwangi Irungu* whose place has now been taken by his widow *Susan Wamuyu Mwangi* sought the eviction of the applicant from the disputed land. To forestall the inevitable eviction, the applicant reached some consent with the decree-holder and the purpose of the consent was to give him time within which he was to vacate the land. That time came and passed. The applicant still stayed put on the land. When he was to be evicted it appears the applicant then challenged the consent order which had given him some breathing space. *Juma J*, who heard the challenge, dismissed it and the applicant filed *Civil Appeal No. 123 of 2003* to which I have already referred. That appeal inevitably failed and as I have said was dismissed by the Court on 12th June, 2009. On 13th July, 2009, one month after the dismissal of his appeal, the applicant was back in the Court, this time around seeking leave to be allowed to appeal against the decision of *Tunoi J* which had dismissed his application to set aside the elders award. He had filed a notice of appeal against the decision made by *Tunoi J* but abandoned that notice. He now comes to me some eighteen years later to extend for him the time within which to lodge a notice of appeal and a record of appeal. His affidavit in support of his motion for extension of time is a mere chronology of issues which have really got nothing to do with an application under **rule 4** of the Court's Rules. The only thing he told me during the hearing of the motion as to the cause of the long delay is

that his advocate, whoever that may be, had let him down. That is not correct because he prosecuted on his own *Civil Appeal No. 123 of 2003* without the assistance of any counsel.

I appreciate that the applicant is a lay person and is trying to do his best to get back land which he probably believes belongs to him. But even laymen must be able to understand and appreciate that they have come to the end of the road. Litigation, whether conducted by laymen or otherwise, must at some stage come to an end and it is my duty to tell this applicant that he must accept that he has lost the land and cannot be allowed to once again revive the litigation. For my part I am unable to exercise my discretion in favour of the applicant. I refuse to extend the time as sought by him and I order that the notice of motion dated 10th July, 2009 and lodged in the Court on 13th July, 2009 be and is hereby dismissed with costs to the respondent.

Dated and delivered at Nyeri this 14th day of May, 2010

R. S. C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR