



**IN THE COURT OF APPEAL OF KENYA**

**AT NAKURU**

**Civil Appli 255 of 2008 (NAK 18/2008)**

**TAI TRANSPORTERS LTD**

**SAMMY KIPLANGAT KORIR .....APPLICANTS**

**AND**

**JOSEPH KIPYEGON KOSKEI (*Suing as personal Representative of the estate of***

**JOSEPHAT KIPKURUI KOSKEI (DECEASED)..... RESPONDENT**

***(An application for extension of time to file and serve Notice of Appeal from the ruling of the High Court of Kenya at Kericho (Koome, J) dated 21st February, 2008 in***

**H.C.C.C. No. 68 of 2003)**

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**RULING**

The applicants by this motion expressed to be brought under **rules 4, 42 and 52(1)** of the Court of Appeal Rules pray for an order that the time for lodging and serving a notice of appeal against the judgment of the High Court of Kenya at Kericho (*Koome, J*) delivered on 21<sup>st</sup> February, 2008 be extended.

Judgment the subject matter of the intended appeal was delivered on 21<sup>st</sup> February, 2008. The applicants aver that they and their counsel were not aware of the date of the delivery of the judgment until 11<sup>th</sup> March, 2008 when the respondent's counsel served the applicants' counsel with a notice of appeal. However, it is the applicants' fear that despite the respondent filing a notice of appeal, they may not file an appeal and so the applicants will not be able to file a Cross-Appeal which they had intended to file. Thus, the leave sought to extend time to file a notice of appeal is done out of abundant caution.

I am prepared to accept that the applicants became aware of the judgment on 11<sup>th</sup> March, 2008 and that **Mr. Nyaingiri**, Advocate, who took judgment on their behalf, did not thereafter get in touch with **Messrs. Jones & Jones**, Advocates, for the applicants. But, it is plain that after the material date the applicants and their counsel went into a deep slumber and did completely nothing until this application was lodged in the Court on 14<sup>th</sup> August, 2008, a period of well-nigh five (5) months and no explanation has been offered for the delay. I have received no explanation whatsoever for this period of delay which I deem inordinate. I think the applicants are guilty of laches and are not worthy of my discretion in their favour.

The applicants did not testify in the superior court; and moreover, the 2<sup>nd</sup> applicant was convicted of careless driving, which was the cause of the death of the deceased whose personal representative and administrator had commenced suit. It is my view, therefore, that the intended appeal may after all not be arguable and that any further procrastination in the matter is prejudicial to the respondent and perpetrates injustice against him.

Moreover, all is not lost for the applicants. They have a right to issue a Notice of Cross-Appeal pursuant to **rule 90** of the Rules upon being served with a Memorandum of Appeal and the Record of Appeal.

For the foregoing reasons I decline to grant the application which I order that it be dismissed with costs.

***Dated and delivered at NAKURU this 6<sup>th</sup> day of March, 2009***

**P. K. TUNOI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**