

IN THE COURT OF APPEAL OF KENYA
AT NYERI
Civil Appli 85 of 2009

DAVID MWANGI NGATIA..... APPLICANT

AND

ISABELA WANGARI SOLOMON

MARY MUMBI MURIITHI.....RESPONDENTS

(Application for extension of time to file and serve notice and record of appeal from a judgment of the High Court of Kenya at Nyeri (Makhandia, J) dated 28/11/08

in

H.C.SUCC. NO. 48 OF 1997)

R U L I N G

The applicant seeks extension of time under *rule 4* of the Court of Appeal Rules to file and serve notice of appeal and record of appeal from the judgment of the High Court of Kenya at Nyeri (*Makhandia, J*) delivered on 28th November, 2008.

I must point out at the outset that the submission of the applicant's counsel is full of inaccuracies which go to the root of the application; and in fact, militates against it.

First, though the counsel told me that no notice of appeal was filed, actually, one was timeously lodged on 2nd December, 2008 and is on record. Again, nothing about extension of time within which to serve the notice of appeal was touched. Why is it not being sought? Further, it is not in dispute that the applicant applied for certified copies of proceedings on 19th December, 2008 and the same were supplied on 6th February, 2009. Taking into account the period excluded by Christmas Vacation and the *proviso* to *rule 81*, it would appear that time within which to file an appeal had not run out when this application was filed by the applicant on 12th March, 2009. It must follow therefore that this application, as framed was unnecessary and ill advised.

As the application was superfluous, unnecessary, misplaced and erroneously lodged, it is accordingly hereby ordered dismissed with costs.

DATED and DELIVERED at NYERI this 21st day of MAY, 2009.

P.K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR