IN THE COURT OF APPEAL OF KENYA
AT NYERI
Civil Application 356 of 2003

NJOKA MURIU *(deceased substituted*
by **SUSAN WANGECHI NJOKA ….……..……..APPLICANT**

AND

EVAN GITHINJI MURIU *(deceased substituted*
by **ESTON KABUI EVAN……..……...RESPONDENT**

(An application for extension of time to file notice and record of appeal out of time from a judgment of the High Court of Kenya at Nyeri (Juma, J.) dated 18th September, 2003

in

H.C.C.C. NO. 182 OF 1984)

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R U L I N G

By an application erroneously dated "11th June, 2008" but filed in court on 12th March, 2008, the applicant, *Susan Wangechi Muriu* seeks an order under *rule 4* of this Court's Rules ("the rules") for extension of time to comply with *rule 54* of the rules.

The background to the application is this.

Some 25 years ago in 1984, the applicant's husband *Njoka Muriu* was sued by his brother, *Evan Githinji Muriu*, for a share of family land registered in the name of *Njoka Muriu*. In a judgment delivered on 18th September, 2003, the land was shared equally between the two brothers. No notice of appeal was filed against that judgment, but on 10th November, 2003, the applicant applied under *rule 4* of the rules for extension of time to file the notice of appeal and that application was heard and determined by a single Judge of this Court Tunoi, J.A on 12th May, 2005. The learned Judge found and held that there was inordinate and unexplained delay in filing the application and he dismissed it. The applicant was entitled at that point to invoke *rule 54* of the rules for reference of the matter to the full court but did not do so. Nor did she write to the Registrar within seven days as provided under the rule. Instead the applicant waited for another 29 days before writing to the Registrar on 9th June, 2005. Although the letter was hopelessly out of time, the Registrar still responded and asked the applicant to deposit Shs.3000 being the filing fees for the intended reference. That was on 6th September, 2005. The applicant did nothing in response to that letter until almost three years later on 12th March, 2008 when she filed the application now before me.

At every stage of the litigation, the applicant has always been represented by learned counsel *Mr. A.P.Kariithi* who confirms that he has been advising her on the matter. It must be assumed that counsel was all along aware of the provisions of *rule 54* and the schedule of fees requirements under the rules. He did not have to wait for the Registrar therefore to advise on those provisions. The only explanation advanced and relied on for the delay in filing the application before me is that the applicant was an old poor lady who was unable to raise Shs.3000 being filing fees for the reference. Mr. Kariithi disclosed that he advised the applicant about the provisions of *rule 112 (1)* of the rules which provides relief for impecunious litigants, but she ignored the advice.

In the meantime the decree of the superior court has already been executed; the land was subdivided, separate Titles issued and an eviction order against the applicant effected. Learned counsel for the respondent, Mr.S.K. Njuguna, submits that the reversal of that

execution by granting the application would cause enormous prejudice to the respondent. At any rate, he submits, there was no reason to grant the application when no explanation is given for a 3-year delay. Furthermore, no material is placed before the court to show that there was an arguable appeal.

I have considered the application, the affidavits on record and the submissions of both counsel and I think for myself that the application is a desperate attempt to resuscitate a corpse! The first application under *rule 4* was dismissed because there was unexplained laches and the applicant learned nothing out of that categorical finding. Instead she took another 3 years or so of unexplained delay to bring the application now before me. I say "unexplained" because the only ground put forward was lack of filing fees, but the disclosure that the applicant was advised about the provisions of *rule 112 (1)* but ignored the advice, puts paid to that excuse and lays the blame squarely on the applicant herself. The applicant must be told in no uncertain terms that this 25 year-old litigation has come to an end and she has to live with the decision of the superior court which has already been effected. Public policy requires that there must be an end to litigation.

The upshot is that this application has no merits and I order that it be and is hereby dismissed. As the dispute is between the members of the same family who were substituted to replace the original litigants who are deceased, I make no order as to costs.

Dated and delivered at Nyeri this 30th day of October, 2009.

P.N. WAKI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR