



**IN THE COURT OF APPEAL OF KENYA**

**AT NYERI**

**Civil Appli 330 of 2006 (NYR.19/06)**

**MURIITHI GACEWA ..... APPLICANT**

**AND**

**FRANCIS MWANGI ..... 1<sup>ST</sup> RESPONDENT**

**MURIITHI NGARI ..... 2<sup>ND</sup> RESPONDENT**

**SAMUEL MUCHIIRI ..... 3<sup>RD</sup> RESPONDENT**

*(Application for extension of time to file and serve notice of appeal from a judgment of the*

*High Court of Kenya Nyeri (Khamoni, J.) dated 15<sup>th</sup> June, 2006 in H.C.C.R.A. NO. 139 OF 1993)*

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**RULING**

This is an application expressed to be brought under *rule 4* of the Rules of this Court seeking leave to file and serve Notice of Appeal out of time, and also; the Record of Appeal.

Judgment, the subject matter of the intended appeal was delivered on *15<sup>th</sup> June, 2006*. The main reason why the applicant did not file a Notice of Appeal within the time limited by the Rules is given by the applicant as his honest and sincere belief that the judgment so delivered had been in his favour and therefore there was no need to take steps to appeal. I think this belief, though mistaken, is indeed genuine. I have read the said judgment it is long, repetitious and sometimes confusing. No wonder the respondents also thought that they had lost the appeal and promptly filed a Notice of Appeal.

It is apparent that the applicant only knew of the correct position – that he had lost the appeal – on *28<sup>th</sup> August, 2006* when his Counsel received the copies of the judgment.

Whatever delay has arisen has been explained to my satisfaction and I believe that it cannot be said in the circumstances to be inordinate.

The delay between *15<sup>th</sup> June, 2006* and *30<sup>th</sup> August, 2006* can be said to be due to the confused nature of the judgment. Thereafter, it appears that some correspondence between the courts and the Provincial Administration, all concerning the dispute and which were not availed to the applicant, required the applicant to be conversant with them before acting and thus causing more delay until he lodged this application on *29<sup>th</sup> November, 2006*.

The dispute between the parties is acrimonious. It involves land. I think that in the particular circumstances of this case, the applicant should be permitted, in the interests of justice, to canvass his appeal before this Court.

The intended appeal, as is shown by the judgment, is, indeed, weighty and cannot be said to be frivolous. Moreover, it appears that the respondents will not suffer any prejudice if the application is allowed.

I exercise my discretion in favour of the applicant and grant the leave sought. The applicant shall file and serve the Notice of Appeal within **7 days** hereof. The Record of Appeal shall be lodged **21 days** after service of the Notice of Appeal. The respondents shall have the costs of this application which I assess at **Shs.5,000/=**.

*Dated and delivered at Nyeri this 16<sup>th</sup> day of May, 2007.*

**P.K. TUNOI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**