



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT KISUMU**  
**CIV APPLI 183 OF 2006**

**JACKSON SABATIA ..... APPLICANT**

**AND**

**ELIZABETH AMAIZA ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY-GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE PRINCIPAL MAGISTRATE’S COURT AT KAPSABET ..... 3<sup>RD</sup> RESPONDENT**

**THE KAPSABET LAND DISPUTES TRIBUNAL ..... 4<sup>TH</sup> RESPONDENT**

*(Application for extension of time to file and serve notice of appeal and record of appeal out of time from a Ruling and order of the High Court of Kenya at Kakamega (Mr. Justice G.B.M. Kariuki) dated 5<sup>th</sup> November, 2004*

**in**

**H.C. MISC.CIVIL APPL. NO. 108 OF 2002)**

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**R U L I N G**

By this application expressed to be brought under **rules 4** and **41** of the Court of Appeal Rules, the applicant, **JACKSON SABATIA**, seeks extension of time within which to file and serve notice of appeal upon the respondent.

The 1<sup>st</sup> respondent has appeared through Mr. Aswani, Advocate. The 2<sup>nd</sup>-4<sup>th</sup> respondents, though duly served, are absent.

The decision, the subject matter of the intended appeal, was delivered on 5<sup>th</sup> November, 2004. An appeal against it being Kisumu C.A. No. 194 of 2005 was duly lodged. However, by its ruling made on 16<sup>th</sup> June, 2006, this Court struck out the said appeal on the ground that the record thereof was served outside the time prescribed by the Rules. The dismissal triggered this Motion which was lodged on 20<sup>th</sup> June, 2006 – four (4) days after the event.

In my view, the applicant has not been guilty of any laches in trying to resuscitate the intended appeal or

in putting in motion a new appeal. It cannot in the circumstances be said to have been guilty of any delay.

Further, I do not discern any prejudice that has been occasioned to the respondents. If any, that may be remedied by the award of costs.

Although Mr. Aswani has forcefully opposed the application on the ground that the intended appeal is frivolous, I would pose: if there were no omissions on the part of the applicant leading to the former appeal being struck out, the same would have been heard and determined one way or the other.

Moreover, the subject matter of the intended appeal being land, the parties should be afforded opportunity to canvass the dispute in the highest court in the land.

I shall exercise my discretion in favour of the applicant and grant the application sought. I extend time within which to file a Notice of Appeal. This shall be filed and served within *seven (7) days* hereof. A record of appeal, though specifically not sought to be lodged, shall be filed 21 days after service of the Notice of Appeal. I award costs of *Shs.7,500/=* to the 1<sup>st</sup> respondent. This must be paid within ten (10) days hereof.

***Dated and delivered at Kisumu this 22<sup>nd</sup> day of November, 2006.***

***P.K. TUNOI***

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***JUDGE OF APPEAL***

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

***DEPUTY REGISTRAR***