



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT NAIROBI

(CORAM: DEVERELL, AG. J.A. (IN CHAMBERS))

CIVIL APPLICATION NAI 280 OF 2004 (UR.141/2004)

BETWEEN

GEORGE CHEGE KAMAU ..... APPLICANT

AND

ESTHER WANJIRA KAMAU ..... RESPONDENT

**(An application for extension of time to file Notice of Appeal and Record of Appeal out in an intended appeal from the Ruling and Order of the High Court of Kenya at Nakuru (Rimita J) dated 8th day**

**of May, 2001**

**in**

**H.C.C.C. NO. 415 OF 1998)**

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**R U L I N G**

This is an application by George Chege Kamau against the respondent Esther Wanjiru Kamau for an extension of time to file a Notice and Record of Appeal from the decision of Rimita J delivered on 8th May 2001. This was a decision dismissing an application for review of his judgment delivered on 28th June 1999 in a dispute concerning land.

The application was brought under Rule 4 of the Court of Appeal Rules (hereinafter “**the Rules**”) which bestows unfettered discretion upon the court which discretion must nevertheless be exercised judicially and not capriciously. In general the matters to be taken into account in deciding whether to grant an extension of time are:

**“First, the length of delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted”.**

**Leo Sila Mutiso v. Rose Helen Wangari Mwangi** (Civil Application Nai. 255 of 1997). The length of the delay between the expiry of 60 days after the filing of the Notice of Appeal and the filing of the present application was approximately three years and three months. No evidence has been produced by the applicant of any written request to the Deputy Registrar of the superior court for copies of the

proceedings and, indeed, in the grounds in the Motion the applicant states that “the letter requesting the proceedings was inadvertently not written”.In his oral submissions in person at the hearing of the application before me he stated “I must have written for copies of the record to the Registrar but I do not have it. It was not included in the application documents now before you.” As a result of this it is clear that the applicant is not entitled to any extension of time arising from the application of the proviso to Rule 81 sub rule (1) and sub rule (2). I have carefully examined the applicant’s affidavit in support of the Motion and the grounds stated in the Motion in search of the reasons for the very substantial delay.While reasons are given for the original delay in filing the application to review Rimita J.’s original decision involving assertions of mistakes made by his advocates none of this is relevant to the period of delay in pursuing the appeal. The applicant’s long drawn out efforts to get details from the Bank, while being a reason for delay at the superior court review stage, they do not provide any valid explanation for the delay in instituting the appeal by filing the Memorandum and record of appeal.

The applicant does appear to have filed the Notice of Appeal in time but that Notice has long since been deemed to have been withdrawn under **Rule 82 (a)**. I consider that the length of delay is certainly inordinate and no adequate reasons have been given for such delay. While it is possible that an appeal would have succeeded that is by no means certain and I do not consider that this aspect is a sufficiently strong factor to cause me to exercise my discretion in favour of an extension of such magnitude. Furthermore there would inevitably be prejudice suffered by the respondent arising from such a lengthy delay in finalizing this litigation.

For these reasons the applicant’s application is dismissed with costs.

**Dated and delivered at Nairobi this 19th day of April, 2005.**

**W. S. DEVERELL**

**AG. JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**