



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(CORAM: OMOLO, O’KUBASU, J.J.A & DEVERELL, AG. J.A)

CIVIL APPLICATION NO. NAI 110 OF 1996 (NYR. 14/1996)

BETWEEN

JOSEIS WANJIRU ALIAS JOSEIS WAIRIMU APPLICANT

AND

KABUI NDEGWA KABUI (Personal Representative of NDEGWA KABUI (DECEASED) }

CATHERINE WAIRIMU BAARU } RESPONDENTS

(An Application for extension of time to file Notice and Record of Appeal out of time in an intended Appeal from a judgment of the High Court of Kenya at Nyeri (Tunoi, J) dated 13th February, 1992

in

H.C.C.C. NO. 71 OF 1982)

RULING OF THE COURT

The matter before us to-day is the order of the single Judge dated 26th October, 2000. The applicant had filed a notice of motion dated 13th March, 1996. She had sought in that motion extension of time to enable her file a notice of appeal and a record of appeal out of time. When that motion came up for hearing, the applicant’s counsel and the applicant herself were not present to urge it. The motion was dismissed, as there was nobody present to urge it.

The applicant thereafter applied to the Court to reinstate the dismissed motion. She was entitled to do so under rule 55(3) of the Court’s rules. KWACH, JA, heard the application for reinstatement. In an order dated 26th October, 2000, the learned single Judge ordered as follows:-

“Application for reinstatement refused. Costs to the respondent.”

No reason was given for that decision and in our view that is not a correct exercise of Judicial discretion. The failure to give any reason for the decision is itself a ground, which entitles the full Court to interfere with a single Judge’s exercise of discretion.

We accordingly allow the reference, reverse the order refusing to reinstate the motion of 13th March, 1996 and order the latter motion reinstated to hearing on its merit.

The costs of the reference shall be in the reinstated motion.

Dated and delivered at Nyeri this 12th day of May, 2005.

R.S.C. OMOLO

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JUDGE OF APPEAL

E.O. O'KUBASU

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JUDGE OF APPEAL

W.S. DEVERELL

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AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR.