



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NYERI**  
**CORAM: TUNOI, J.A. (IN CHAMBERS)**  
**CIVIL APPLICATION NO. NAI. 356 OF 2003 (NYR.19/2003)**

**BETWEEN**

**1. NJOKA MURIU**  
**2. SUSAN WANGECHE NJOKA.....**  
**.....APPLICANTS**  
**AND**  
**1. EVAN GITHINJI MURIU**  
**2. ESTON KABUI EVAN.....**  
**.....RESPONDENTS**

*(Application for extension of time to file Notice and Record of Appeal out of time form a judgment of the High Court of Kenya at Nyeri (Juma, J) dated 18.9.03*

**in**  
**H.C.C.C. NO. 182 OF 1984)**  
**\*\*\*\*\***

**R U L I N G**

This application is brought under **Rule 4** of the Rules of this Court. It seeks an extension of time to file and serve a Notice of Appeal, Memorandum of Appeal and Record of Appeal.

Judgment the subject matter of the intended appeal was delivered on 18th September, 2003. However, by the time this motion was lodged, and indeed; to date no Notice of Appeal has been lodged.

A Notice of Appeal is a simple one page formal piece of paper whose lodgment is normally a matter of course. The filing of it does not mean that an appeal will eventually be filed. A careful advocate would lodge a Notice of Appeal to safeguard his client's interests. In most cases instructions need not be obtained from the client before lodging it.

In my view, there has been an inordinate delay in lodging it and the same has not been explained to my satisfaction. Indeed, the applicant has been guilty of laches.

Even though the matter in issue is family land, the indolent manner by the applicant denies him my discretion.

I think that this is not a fit and proper case for the exercise of my discretion which I decline to exercise.

Accordingly, I hereby dismiss the application with costs to the respondent.

***DATED and DELIVERED at NYERI this 12th day of May, 2005.***

*P.K. TUNOI*

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*JUDGE OF APPEAL*

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

**DEPUTY REGISTRAR**