

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

CORAM: TUNOI, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 168 OF 2004 (NYR.12/2004)

BETWEEN

SAMPSON NDERITU KARITU.....APPLICANT

AND

1. MARTHA WATETU KARITU substituted by

MARY WANJIKU KARITU

2. JOSEPH NDUMIA KARITU.....RESPONDENTS

(Application for extension of time to file Record of Appeal from a judgment of the High Court of Kenya at Nyeri (Juma, J) dated 13.3.03

in

H.C.SUCC.C. NO. 19 OF 1999)

R U L I N G

The matter in issue in the intended appeal is a family land. It appears indeed sensitive. It is true there have been delays here and there in lodging the intended appeal. The delay is about 79 days. It appears inordinate on the face of it but it has been explained to my satisfaction. It was caused by the Court's Registry which gave an erroneous advice.

I am satisfied that if I grant the application for extension of time to lodge the intended appeal the respondents will not be prejudiced in any manner. Perhaps it will ease the animosity within the family and probably the intended appeal if heard and determined will erase a permanent source of friction and fights between the parties.

I need not reiterate here that it is an established practice of this Court that all land disputes, wherever possible, should be finally determined by this Court and that no party who desires to be heard by the Court should be driven out of the seat of justice by technical application of the Rules see **JOHN KIURIA VS. HELLEN WAHITU C.A. 19 OF 1985 (unreported)**.

I think that the applicant, having expressed his wish to have the appeal heard by this Court, should not be denied the right to do so. The interests of justice so demands because the breaches of the rules he is alleged to have committed cannot be allowed to frustrate an intended appeal.

I exercise my discretion in favour of the applicant. I grant the application as prayed. The applicant is granted leave to file the Record of Appeal out of time. He shall do so within 21 days hereof. The costs of this application are awarded to the respondents in any event.

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