

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

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

Civil Application NAI 213 of 2005 (NAK.10/05)

BETWEEN

CATHERINE KABURA (suing as the legal representative

of the Estate of MAINA MWATI (deceased) APPLICANT

AND

KARIUKI THIONGO RESPONDENT

(Application for extension of time within which to lodge and
serve a notice of appeal and a record of appeal out of time
from a judgment of the High Court of Kenya at Nakuru
(Justice Rimita) dated 23
rd
June, 2000
in
H.C.C.A. NO. 39 OF 1996)

R U L I N G

Mr. Gai who now appears for the respondent since 25th August, 2005 informs me that the respondent has problems with his previous lawyers who have not released the file to him. As such, he has been unable to file a replying affidavit to the application set down for hearing today. The application itself was served on the previous advocates in July, 2005. There has been no action taken since then and the applicants' counsel, Mr. Kahiga, sees no reason why the matter cannot proceed.

It is indeed so, that the application was timeously served and the respondent should have, if so inclined, filed and served a replying affidavit. I appreciate, however, the difficulties expressed by Mr. Gai in obtaining the necessary instructions in the matter. I have looked at the subject matter of file application and it involves land. The respondent has not applied for any adjournment before. I see no prejudice to the applicant if a short adjournment is granted and costs are paid for the delay caused.

Accordingly, I grant the adjournment sought. The respondent shall file and serve an affidavit in reply, if any, within 7 days of today's date. The respondent shall also within the same period pay the costs of this

adjournment to the applicant assessed at Shs.4,000/= . In default of compliance with the order for

payment of costs, execution shall issue forthwith.

Dated and delivered at Nakuru this 28th day of September, 2005.

P.N. WAKI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR