

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CIVIL APPLICATION NAI 216 OF 2005 (17/2005)
BETWEEN

1 TERESA MORAA OMUNDI
2 NYANCHOKA OMARI.....APPLICANTS
AND
STEPHEN KENDU NYAEGA.....RESPONDENT

*(An application to file and serve Notice and Record of Appeal out of
time from the Judgment & Decree of the High Court of Kenya at Kisii
(Birech Commissioner of Assize) dated 17th June, 2003*

in
HCCC NO 105 OF 2005 (O.S.)

RULING

This is an application under **rule 4** of the Court of Appeal Rules in which the applicants are seeking leave to file and serve notice of appeal and record of appeal out of time. The applicants' previous appeal (Civil Appeal No. 225 of 2003) was struck out on 23rd June, 2005 on a technicality in that it was filed out of time without leave of the Court. This application was then filed on 4th July, 2005 which was about ten days after the previous appeal was struck out. Clearly, there was no delay in bringing this application. Mr Kimanga, for the respondent, does not oppose the application save for the costs of the application.

In view of the foregoing, this application is allowed and the applicants are to file and serve the notice of appeal within seven (7) days from the date hereof and lodge the record of appeal within thirty (30) days from the date the notice of appeal is filed. Costs assessed at Kshs. 5,000/- awarded to the respondent which amount should be paid within 10 days from today in default execution to issue.

Made at Kisumu this 29th day of November, 2005.

E. O. O'KUBASU

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR