



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NYERI**  
**(CORAM: O’KUBASU, J.A (IN CHAMBERS))**  
**CIVIL APPLICATION NO. NAI. 146 OF 2004 (NYR 9/2004)**

**BETWEEN**

**1. PATRICK MWANGI WANDERI )**  
**2. MILKA WAIRIMU WANDERI ) ..... APPLICANTS**  
**AND**  
**1. GRACE MUTHONI MUHIU )**  
**2. JORAM MUHIU NGUNJE ) ..... RESPONDENTS**  
**3. LUCY WANJIKU MUHIU )**

**(Application for extension of time to file and serve notice and record of appeal out of time in an intended appeal from the Judgment and decree of the High Court of Kenya at Nyeri (Mitey, J) dated 8th October, 2002**

**in**  
**H.C.C.C No. 117 of 2001)**  
**\*\*\*\*\***

**R U L I N G**

I have before me an application under **rule 4** of this Court’s Rules in which the applicants seek the following orders:-

- “1. THAT time within which to file and serve Notice of Appeal and Record of Appeal be extended.**
- 2. THAT costs of and incidental to this application abide the result of the said appeal.”**

The application is supported by an affidavit of Mr. A.J. Kariuki, counsel for the applicants. In that affidavit, Mr. Kariuki gives a detailed explanation as to what led to the delay. Part of the explanation was that the decree was not approved in good time and an application for extension of time was filed which was later withdrawn. It was pointed out that the dispute relates to family land in which the parties are members of that same family.

Mr. Njuguna, for the 1st respondent, opposed the application on the ground that there was inordinate

delay which had not been explained.

Mr. Nderi, for the 2nd respondent, opposed the application relying on a replying affidavit. He complained that there was no sufficient material placed before the Court to warrant the exercise of this Court's discretion in favour of the applicants.

The 3rd respondent had nothing to say.

An application under **rule 4** of the Rules seeks this Court's exercise of discretion. In **Leo Sila Mutiso v. Rose Hellen Wangari Mwangi – Civil Application No. Nai. 251 of 1997 (unreported)** this Court set out the principles that would guide it in such applications. I have considered what Mr. Kariuki has said in his submission and the objections raised by the respondents. This is a dispute relating to land. The parties are members of the same family. The applicants indicated a desire to appeal when a notice of appeal was filed within the prescribed time. There was a delay which has been explained. Indeed, there is a valid notice of appeal and what is now to be dealt with is the extension of time in which to file record of appeal.

In view of the foregoing, the notice of appeal already filed is deemed to have been validly filed and properly on record and the applicants are now granted extension of time in which to lodge record of appeal. The record of appeal is to be lodged within 30 days of this ruling. Costs shall be in the intended appeal.

**Dated and delivered at Nyeri this 5th day of November, 2004.**

**E.O. O'KUBASU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**