



**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: LAKHA, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI. 286 OF 2002**

**BETWEEN**

**PAUL NG'ANG'A KAMUYU .....APPLICANT**

**AND**

**PETER KINUTHIA KAMUYU ..... 1ST RESPONDENT**

**HELLEN W. KAMUYU ..... 2ND RESPONDENT**

**ELIZABETH W. KAMUYU ..... 3RD RESPONDENT**

**JOSEPH N. KAMUYU ..... 4TH RESPONDENT**

**STEPHEN W. KAMUYU ..... 5TH RESPONDENT**

**LUCY M. KAMUYU ..... 6TH RESPONDENT**

(Application for leave to file appeal out of time from the Ruling of the High Court of Kenya at Nairobi delivered on 13th February, 2000 (Hon. Justice Githinji))

in

SUCCESSION CAUSE NO. 552 OF 1993)

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**R U L I N G**

This is an application by the unsuccessful petitioner seeking an order that he be granted leave to file out of time a fresh notice of appeal and a record of appeal against the ruling of the superior court given on **13 February, 2000** . The litigation commenced by the superior court under the provisions of **Succession Act, Cap 150** of the Laws of Kenya . A notice of appeal was filed within time but it was wrongly dated. The applicant's advocate discovered this on or about **2 September 2002**. This application was not filed until 8 October, 2002.

The delay from **2 September** to **8 October** of more than about a month has not been explained satisfactorily or at all. This, in my view, was an inordinate delay in filing such a single application for extension. There is no account or an explanation of the delay entailed. In these circumstances, I am

disinclined to exercise my discretion in favour of the applicant having regard to the lack of urgency which has been shown on his part in bringing this application before the Court.

This sufficiently disposes of the application. If, however, it is found that I am wrong, then I am of the view that in the instant case no appeal lies to this Court from the decision of the superior court intended to be appealed against. If that is so, then there will be no question of granting any extension as to do so would be to act in vain which this Court does not. It is not in dispute that the proceedings originated in the superior court whose decision gave rise to an order. For the reasons given by this Court in **MARGARET MAKHANGU JOHN VS. DAVID JOHN KIBWANA (EXECUTOR) Civil Appeal No. 84 of 1995,** no appeal lies from such an order of the superior court as of right but only with leave. Such leave not having been sought or obtained would render the intended appeal incompetent in which case is not necessary to consider the present application for extension. I may add that the time for obtaining such leave expired on 27 February 2000 i.e. within 14 days of the date of the decision of the superior court.

Accordingly and, for the reasons above stated, I dismiss this application with costs.

Dated and delivered at Nairobi this 3rd day of February, 2003

**A.A. LAKHA**

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**JUDGE OF APPEAL**

I certify that this is

a true copy of the original.

**DEPUTY REGISTRAR**