



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OMOLO, TUNOI & O’KUBASU JJ.A)**

**CIVIL APPLICATION NO. 282 OF 2002**

**BETWEEN**

**LILIAN WAIRIMU NGATHO AND**

**ELIZABETH MURUNGARI NJOROGE .. .....APPLICANTS**

**AND**

**NAOMI NDURUKA AND**

**NJOROGE NJAU .....RESPONDENTS**

**Consolidated with**

**CIVIL APPLICATION NO. 283 OF 2002**

**BETWEEN**

**LILIAN WAIRIMU NGATHO AND**

**ELIZABETH MURUNGARI NJOROGE .....APPLICANTS**

**AND**

**LEGAL REPRESENTATIVES OF THE ESTATE**

**OF KIRUHI KIMONDO & FIVE OTHERS .....RESPONDENTS**

**(An application to strike out a Notice of appeal from a Judgment  
of the High court of Kenya at Nairobi (Lady Justice Rawal) dated**

**2.11.2000)**

**in**

**H.SUCC.C. 2616 OF 1999 & 1074 OF 1998)**

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**RULING OF THE COURT**

These two motions have been consolidated for convenient disposal in that both arise out of a ruling delivered on 2nd November, 2000, by Rawal J, and concern the Estate of the late **Wanjiku Njau** over which the parties are staking rival claims.

By the motions the applicants seek orders to strike out the notices of appeal on the ground that since they were filed on 8th and 9th November, 2000, no steps have been taken to prosecute or take further action in the intended appeals. This fact is not denied by the respondents, but, they aver that in the absence of proceedings for which they properly applied in the manner prescribed by the rules they have been unable to institute the intended appeal.

It is manifestly clear that proceedings of a trial in the superior court are mandatory to mount a valid appeal before this court. It is not in dispute that the proceedings have not been availed to the respondents and therefore they have been unable to move. In the circumstances the respondents cannot be faulted on any omissions on their part. However, we have been informed from the bar that typed copies are now available for collection.

Accordingly, we reject the applications and dismiss them. We order the respondents to lodge the intended appeals within 30 days hereof failure of which the notices of appeal shall stand struck out. The respondents shall pay costs occasioned by these applications to the applicants. We assess them at Shs. 5,000/= and we order that they be paid within 10 days hereof and in default execution to issue.

These are our orders in these applications.

Dated and delivered at Nairobi this 6th day of June, 2003.

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**E. O. O'KUBASU**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**