



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**  
**AT NAKURU**

**CORAM: O'KUBASU, J.A. (IN CHAMBERS)**

**CIVIL APPLICATION NO. NAI 378 OF 2001 (NKU 35/01)**

**BETWEEN**

**SAMUEL GICHINA MUIRURI ..... APPLICANT**

**AND**

**EVANSON KIMEMIA ..... RESPONDENT**

**R U L I N G**

This is an application under rule 4 of this Court's Rules. The application comes up as a result of a long history of confusion brought about by the issue of date of judgment. The judgment in question was dated on a different day from when it was delivered. That was the beginning of the problems that have been associated with this matter. As we know vide rule 4 of this Court's Rules , this Court has unfettered discretion but like all other discretions this discretion must be exercised in a judicial manner bearing in mind that the ends of justice must be met for both sides. The guidelines can be found in the ruling of this Court in **LEO SILA MUTISO VS ROSE HELLEN WANGARI MWANGI Civil Application No. NAI 251 of 1997 (unreported)** .

We have been given a brief history of this matter by Mr Kariuki for the applicant. Mr K. Njau for the respondent does not dispute what Mr Kariuki told this Court. Hence the reasons for delay have been given as confusion in dates of the judgment. This is a matter beyond the control of the applicant. We have then been told that the dispute relates to land and we know matters relating to land are very sensitive in this country. This applicant had indicated his desire to appeal right from the beginning. He has a right of appeal but his efforts were frustrated by what was not within his control. In view of the foregoing I am of the opinion that this is a proper case in which I should exercise my discretion in favour of the applicant. Hence this application is granted and the applicant is to file a notice of appeal within seven (7) days of this ruling and file and serve the record of appeal within thirty (30) days from the date the notice of appeal is filed. The respondent is awarded costs of this application which I assess at KShs.5,000/= the same to be paid within 15 days from today.

**Dated and delivered at Nakuru this 21st day of February, 2002.**

**E. O. O'KUBASU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**