



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
(CORAM: TUNOI, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 394 OF 2001 (KSM.62/01)

BETWEEN

1. WILLIAM AUDI ODODA

2. PAUL WAORE ODODA.....APPLICANTS

AND

JOHN YIER.....RESPONDENT

**Application for extension of time to lodge and serve the
notice and record of appeal out of time in an intended
Appeal from a ruling and order of the High Court of Kenya
at Kisumu (Wambilyangah, J.) dated 28th May, 1998**

in

H.C.C.C. NO. 66 OF 1978)

R U L I N G

I am satisfied that the main reason why the appeal was not lodged within the prescribed period is because the superior court file went missing immediately after the judgment in Kisumu H.C.C.C. No. 66 OF 1978 was pronounced.

This fact was noted by this Court on 3rd July, 2000 when it ordered the Registrar to make available the original file as well as the skeleton file to the Court by its next sessions which took place on 24th November, 2000. The resultant effect of the missing file was the inability by the applicants to obtain primary and other documents necessary to construct a valid record of appeal.

The delay, therefore, though rather inordinate, cannot be visited upon the applicants. I accept that the copies of the plaint and defence were obtained on 5th October, 2001. Soon thereafter this application was

mounted on 30th October, 2001.

The applicants cannot be guilty of laches. They have satisfactorily explained the delay which has bedecked the intended appeal.

The subject matter of the intended appeal is land whose value is given as Shs. 43 million but was disposed of at a throw away price in a public auction. In the circumstances, I think the applicants should be afforded opportunity to canvas their appeal in the highest court in the land.

It has not been shown to me that the respondent will suffer any prejudice if I allow the application. I exercise my discretion in favour of the applicants.

In the interests of justice I allow the application as prayed for in the motion dated 30th October, 2001. I will grant leave to lodge the notice of appeal and the record of appeal out of time. The Notice of Appeal shall be filed within 7 days hereof. The record of appeal shall be lodged 21 days thereafter. The costs of this application shall be in the intended appeal in any event.

Dated and delivered at Kisumu this 13th day of March, 2002.

P.K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR