



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CORAM: TUNOI, J.A. (IN CHAMBERS)**  
**CIVIL APPLICATION NO. NAI. 331 OF 2001**

**BETWEEN**

**PETER MUNJUGA GATHURU ..... APPLICANT**

**AND**

**HARUN OSORO NYAMBOKI .....1ST RESPONDENT**

**ESTATE BUILDING SOCIETY .....2ND RESPONDENT**

(Application for extension of time to file a notice of appeal and appeal out of time in an intended appeal from the judgment of the High Court of Kenya at Nairobi (Kuloba, J.) dated 17th June, 1999

in

H.C.C.C. NO. 2874 OF 1987)

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**RULING**

A series of mistakes has been committed by the applicant in trying to lodge a proper appeal. But is this by itself sufficient to deny him his undoubted right to canvass his appeal before this Court? I do not think so.

Despite failure to comply with the rules, the applicant has not been guilty of any delay. Each and every fault on his part has been penalised by way of costs.

Though the maxim that litigation must come to an end in the interest of justice is demanded by public policy this should not be used to deny a litigant his rights. I will exercise my discretion in favour of the applicant.

I will allow the application. I grant leave to file a notice of appeal out of time. This should be done within seven days hereof. The record of appeal shall be lodged 21 days thereafter. Costs of this application which I assess at Shs.5,000/= shall be paid to the respondents within ten days hereof.

**Dated and delivered at Nairobi this 21st day of May, 2002.**

**P. K. TUNOI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**