

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

CORAM: SHAH, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 428 OF 2001

BETWEEN

**SAMUEL MWANGI MAINAAPPLICANT
AND
CHARLES MUTHIGANI WAITHAKA
STEPHEN WACHIRARESPONDENTS**

**(Application for extension of time to file an appeal
from a Judgment of the High Court of Kenya at Nyeri
(Mr. Justice J.V.O. Juma) dated 15th February, 2001**

**in
HC.SUCC. NO. 306 OF 1994)**

RULING

The applicant seeks leave to lodge his record of appeal out time. His advocates lodged the notice of appeal, in time, on 27th February, 2001. The said advocates applied for copies of proceedings and judgment again in time and served a copy of the letter bespeaking copies of proceedings and judgment on the advocates for the respondents in time. They obtained copies of proceedings and judgment on 9th October, 2001. They had 60 days from 9th October, 2001 to lodge their clients' record of appeal. Instead they lodged this application on 18th October, 2001 for the extension of time to lodge a record of appeal. Quite clearly, as Mr. Okeyo pointed out, the application was premature as the time to lodge the record of appeal had not run out. It has now run out. Mr. Wachira who appears for the applicant says he overlooked the proviso to rule 81(1) of the Rules of this Court; that it was oversight on his part he said. Not reading a rule and a simple one at that is sheer negligence. What I do in those circumstances? The applicant is the aggrieved party. He probably has no idea that his advocate has bungled or that he has not read one of our rules. The dispute refers to inheritance of a parcel of land. I am unable to say that the intended appeal is frivolous.

Using the unfettered discretion that I have, I allow this application and order that the record of appeal be lodged within the next 30 days but I make this a conditional order. The condition I impose is that the applicant will pay the respondents' costs which I assess at Shs.4,000/= within the next 30 days. If he does not pay this sum this application will stand dismissed with costs without any further order.

Dated and delivered at Nyeri this 10th day of May, 2002.

A. B. SHAH

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR