

IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI. 360 OF 2001

BETWEEN

CECILIA GATHONI 1ST APPLICANT

HARUN J. M. THAIRU 2ND APPLICANT

AND

GEORGE KARIUKI KABUGU RESPONDENT

**(Application of extension of time to file a record of
appeal and notice of appeal out of time in an
intended appeal from the judgment of the High Court
of Kenya at Nairobi (Keiwua, J) dated 7th June, 1995**

in

H.C.C.C. NO. 307 OF 1995 (O.S.))

R U L I N G:

This is an application for leave to file a notice of appeal and record of appeal out of time.

This matter had been canvassed before me way back in 1996 and has thereafter come to this Court on several occasions. The facts underpinning the application are well known and I need not rehash them. Suffice it to say, however, that the appeal was struck out on 12th October, 2001 and this application was lodged a week later. The speed at which the application was filed is a clear indication of the determination by the applicants to have the matter in issue finally resolved by this court. I think they should have the right to have the matter in issue finally resolved. involves land and it is said that wrong procedures were followed to obtain the orders the subject of the intended appeal. I think that, certainly, the issues to be raised therein would be weighty.

The applicants' counsel may have committed grave errors in having the appeal struck out but the respondent has been compensated for by way costs. There is no delay involved herein. The applicants are not by themselves responsible for errors of procedure. They should not be denied their right of appeal. The dictates of justice demand that I allow the application and I do so. Leave is hereby granted to the applicants to lodge the Notice of Appeal out of time. They should do so within 7 days hereof. The record of appeal shall be lodged within 21 days after service of the Notice of Appeal. The costs occasioned by this application shall be in the intended appeal in any event.

Dated and delivered at Nairobi this 9th 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