



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
CORAM: BOSIRE, J.A (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 141 OF 2002 (NYR 14/2002

BETWEEN

EPHANTUS WANJOHI RUHARA..... APPLICANT

AND

- EUNICE WANJIKU RUHARA) 1ST RESPONDENT**
- JOTHAM GICHUKI RUHARA.....) 2ND RESPONDENT**
- JOSEPH KAGO RUHARA) 3RD RESPONDENT**
- DUNCAN MAINA RUHARA) 4TH RESPONDENT**
- JOHN MUCHOKI RUHARA) 5TH RESPONDENT**
- ESTHER WAKONYU RUHARA) 6TH RESPONDENT**
- SAMUEL MWANGI RUHARA) 7TH RESPONDENT**

(Application for extension of time to file Notice and Record of Appeal out of time from a Ruling and Order of the High Court of Kenya at Nyeri (Abdullah, J) dated 9.11.1985.

**in
H.C.C.C. NO. 174 OF 1985)**

RULING

It is well settled now that a party whose appeal has been struck out as incompetent may restart the appellate process. That is what the applicant seeks to do in this application expressed to be brought under **rule 4** of the Court of Appeal Rules. The applicant seeks an order extending the time within which to file a fresh notice and record of appeal. Counsel for the respondents, Mr. Okeyo, argues that I should not exercise my discretion under the aforesaid rule because the litigation between the parties started way back in 1985, and the decision intended to be appealed against was given in 1989. In his view litigation should come to an end.

I agree with Mr. Okeyo that in an appropriate case litigation should come to an end. However, where as here the delay in concluding the litigation arose because of an excusable mistake of counsel for the applicant, I am inclined to exercise my discretion in favour of extending the time as prayed. That is the more so because the applicant acted with promptitude in filing this motion after his appeal was struck out.

In the result I extend the time for filing a fresh notice of appeal by seven (7) days from the date hereof and for a further thirty (30) days thereafter for the lodging of a record of appeal. The applicant shall bear the costs of this motion assessed at Kshs. 7,000/= to be paid within five days of today's date failing which this motion shall be deemed to have been dismissed with costs.

Dated and delivered at Nyeri this 30th day of October, 2002.

S.E.O. BOSIRE

JUDGE OF APPEAL

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

DEPUTY REGISTRAR