

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NYERI
CORAM: BOSIRE, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 135 OF 2002 (70/2002)

BETWEEN

M'MAGIRI M'MUTHARI.....APPLICANT
AND
GIDEON KIMATHI NGUTHARI.....RESPONDENT

(An application for extension of time to file notice of appeal and record of appeal out of time against the ruling & Order of the High Court of Kenya at Meru (Omwitsa, C.A.) dated 18th August, 1999 in H.C.C.C. NO. 100 OF 1997)

R U L I N G

This is an application under Rule 4 of the Court of Appeal Rules for an Order extending the time within which to file a fresh notice of appeal and a record of appeal. In the course of hearing the application it has emerged that the applicant's earlier appeal to wit *Civil Appeal No. 120 of 2001* is still pending. Although this Court, in an application for stay of execution, to wit *Civil Application No. Nai.441 of 2001*, ruled that it lacked the jurisdiction to hear that application as it was made on the basis of an invalid notice of appeal that notice of appeal is still on record and has not been struck out. Likewise as I stated earlier, *Civil Appeal No. 120 of 2001*, aforesaid, which was filed pursuant to that notice of appeal is also still pending. In the result, I cannot possibly grant the applicant leave to file a fresh notice of appeal and record of appeal.

Accordingly, this application is unmeritorious, and it is 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