

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

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

CIVIL APPLICATION NO. NAI. 166 OF 2002 (KSM.17/02)

BETWEEN

MARY SHILAKO MUSIAPPLICANT

AND

JACOB MASINDE WANJALARESPONDENT

**(An application for extension of time to file
and serve a notice and record of appeal out of
time against the decision of the High Court of
Kenya at Kakamega (Mr. Justice Tanui) dated
25th October, 1999**

in

H.C.MISC. APPLICATION NO. 268 OF 1999)

R U L I N G

The applicant is aggrieved by the orders made on 25th October, 1999. She alleges in her affidavit in support of the application that she was not aware of those orders until June, 2002, when the Police went to arrest her. She lodged this application soon thereafter.

The main contention advanced by the respondent's counsel is that the applicant was duly served with all the pleadings and process of of the matters in the superior Court but she did not act upon them. On the other hand the applicant denies ever being made aware of the proceedings in the superior court. Anyway, the truth or otherwise is not for me now to resolve.

The delay involved in the institution of the application is over three (3) years. Indeed it is exceptional. Should this rather inordinate delay be used to deny the applicant a right to mount an appeal? I do not think so. Land is involved. Moreover, many members of the same family took part in awarding the applicant the parcel, the subject matter of the intended appeal. The dispute cannot be burried by an avalanche of technicalities. The dictates of justice weigh heavily in allowing this application.

I will exercising my discretion in favour of the applicant. I grant the motion as prayed. Leave is hereby granted to the applicant to file her appeal out of time. the Notice of Appeal shall be lodged 7 days hereof and the Record of Appeal shall be filed 21 days after the service of the Notice of Appeal. The costs of this application shall be in any eDvaetnetd. and delivered at Kisumu this 28th day of November, 2002.

P.

K.

TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR