

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA

(Coram: Kwach, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 203 OF 2000
BETWEEN

1. MARIAMBHAI SHABIR HUSSEIN NOORBHAI
2. FATMABHAI TAIBALI ABDULHUSSEIN NOORBHAI
3. GULAMALI GULAM HUSSEIN
4.SHEIKH.....APPLICANTS
AND
DECHE CHINYAKA.....RESPONDENT

(An application for extension of time to file Notice of
Appeal out of time in an intended appeal from a Ruling and
Order of the High Court of Kenya at Mombasa (Hayanga, J.)
dated 18th May, 2000

in
H.C.C.C. NO. 161 OF 1997)

R U L I N G:

This is an application for extension of time to file a Notice of Appeal against the decision of Hayanga, J. given on 18th May, 2000. Instead of lodging a notice of appeal to challenge that decision, the applicants chose to make an application in the superior court to set it aside on the basis that it was made ex parte. The decision was not made ex parte; what happened was that the Advocate retained by the applicants did not attend court. The application to set aside was dismissed on 17th July, 2000. Having failed to have the decision set aside, the applicants now want to go back and appeal against the decision of 18th May, 2000.

I regard the conduct of the applicants as a blatant abuse of the process of this Court. Section 8 of the Land Disputes Tribunal Act, 1990 sets out in simple and clear language the procedure for settling disputes. Apart from that, the delay in bringing the application has not been explained at all. In the circumstances, I decline to exercise my discretion in favour of the applicants and dismiss this application with costs to the respondent which I assess at KShs. 10,000/- to be paid within ten (10) days and in default execution to issue.

Dated and delivered at Mombasa this 19th day of January, 2001.

R.O. KWACH
.....
JUDGE OF APPEAL

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