

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: TUNOI, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI 256 OF 2000
BETWEEN

JOSECK WAKOLI LIBUSIAPPLICANT
AND
JACKSON WASILWA LIBUSI)
JUSTUS WANGA LIBUSI)RESPONDENTS
WYCLIFFE KHISA LIBUSI)

**(An application for extension of time to lodge and serve
the notice of appeal and record of appeal out of
time from the judgment and decree of the High Court
of Kenya at Bungoma (Mbitio J.) dated 2nd October,
1998**

in
H.C.C. SUITS NO.81 (OS) & 85 OF 1994 (CONSOLIDATED)

R U L I N G

This is an application expressed to be brought under rule 4 of the Court of Appeal Rules for extension of time to file a Notice of Appeal and lodge an appeal.

The genesis of this application is that judgment the subject matter of the intended appeal was delivered on 2nd October, 1998. There then followed Civil Appeal No.300/99. Unfortunately, it was struck out on 16th June, 2000 for being incompetent for failure to incorporate in the record one of the primary documents and exhibits, namely, a copy of the Title to Land Parcel No. Malakisi/N & C Namwela/17.

This application was lodged on 2nd August, 2000. The explanation for the delay of about 45 days has been given as due to the unavailability of the original file in its home registry (Bungoma). Obviously, a number of days were needed to transmit it from Kisumu - Court of Appeal Registry - to Bungoma. The explanation to me is satisfactory and reasonable. There is no inordinate delay, in my view. It is worthy of note that the respondents do not challenge the application on the ground of delay or laxity on the part of the applicant or his counsel.

The dispute involves a family land. It appears protracted. The applicant wishes to have the matter resolved once and for all by the highest court on the land. He should be given the opportunity to do so. The interests of justice, so demand.

I exercise my discretion in favour of the applicant and allow the application as prayed. I extend the time for filing the Notice of Appeal by 7 days from today and for filing the record of appeal by 21 days from the date of filing the Notice of Appeal. The costs of the application shall be in the intended appeal.

Dated and delivered at Kisumu this 22nd day of March, 2001.

P.
JUDGE OF APPEAL

K.

TUNOI

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

DEPUTY REGISTRAR