



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NYERI  
CORAM: BOSIRE, J.A (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI 367 OF 2000  
BETWEEN**

**GLADYS WANJIRU NGACHA.....APPLICANT  
A.N.D**

**1. THERESA CHEPSAAT  
2. PIUS KIBWETTI SEVREY  
3. BERNARD KATHANGA  
4. KERUGOYA COUNTY COUNCIL  
5. THE ATTORNEY GENERAL ON BEHALF OF COMMISSIONER OF  
LANDS.....RESPONDENTS**

**(Application for extension of time to file notice and  
record of appeal in an intended appeal from an order  
of the High Court of Kenya at Nyeri (Ang'awa, J)  
dated 28th November, 1994  
in  
H.C.C.C. NO. 182 OF 1992)**

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**R U L I N G**

This is the third time the applicant, Gladys Wanjiru Ngacha, (the applicant) has brought an application for an extension of time within which to file a fresh notice of appeal and a record of appeal.

On 28th November, 1994 Ang'awa J declined to grant the applicant the leave to file a reamended plaint in Nyeri High Court Civil Case No. 182 of 1992. It is against the Order refusing the leave that the applicant intends to appeal. Her first application for an extension of time to file a notice of appeal was heard by Akiwumi JA, and on 18th October, 1996, he delivered a ruling in which he granted the applicant the extension she sought. She thereafter lodged Civil appeal No. 297 of 1996. This appeal was later on 13th May, 1998, struck out as incompetent as the record of appeal did not include a primary document to wit, a copy of the amended plaint.

A day after the aforesaid appeal was struck out, the applicant brought the second application seeking an order extending the time within which to file a fresh notice of appeal and a record of appeal. That application was heard by Shah. JA, who granted the extension sought on 17th November, 1998. Pursuant to that extension, the applicant filed Civil Appeal No. 294 of 1998. The appeal too, was struck out as incompetent because the copy of the extracted order which was included in the record of appeal did not represent the true position. The order striking out the appeal was made on 27th October, 2000, and about twelve days later this application was filed. The main objection raised against the application by the respondents is that the applicant has not been keen and diligent enough in filing her records of appeal and should not therefore be granted further indulgence. Both Mr. Wachira for 1st, 2nd and 3rd respondent, and Mr. Muchira for 4th respondent, submitted before me, that there should be an end to litigation, and a party should not be allowed more than say two opportunities to restart the appeal process.

Mr. Mahan for the applicant, who I must say is the person to blame for the two failed appeals, submitted before me, correctly in my view, that each case must be considered on the basis of its peculiar facts and circumstances. It will be quite restrictive, and possibly work injustice, if a rule as suggested by the respondent's respective counsel were to be promulgated.

In applications under rule 4, aforesaid, the Court exercises discretionary jurisdiction. The discretion

being judicial must be exercised on the basis of evidence and sound legal principles. On two previous occasions the applicant has not been able to file a competent appeal. That as I said earlier, is clearly the fault of his counsel being the person qualified who was employed to professionally assist the applicant. In the first appeal, he overlooked the fact that a copy of the amended plaint was supposed to be part of the record of appeal. Neither himself nor both counsel for the respondents noticed the defect in the order when the competence of the first appeal was considered, because I believe the defect was present then. It was not a defect which was obvious. On that ground alone I am inclined to exercise my judicial discretion in favour of extending the time within which to file and serve a notice of appeal and record of appeal.

In the result I extend the time within which to file a notice of appeal by 7 days from the date hereof and for a further 15 days within which to file and serve a record of appeal. In the circumstances of this matter, Mr. Mahan's firm shall pay to the 1st, 2nd, 3rd and 4th respondents their respective costs assessed at Kshs.2,000/= each.

Dated and delivered at Nyeri this 17th day of May, 2001.

**S.E.O. BOSIRE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR.**