



**IN THE COURT OF APPEAL  
AT NAIROBI  
(CORAM: O'KUBASU, J.A. (IN CHAMBERS))  
CIVIL APPLICATION NO. NAI. 115 OF 2001**

**BETWEEN**

**PETER KAMAU NJUGUNA ..... APPLICANT**

**AND**

**1. STEPHEN MAGICHU**

**2. JOSEPH WARARI**

**3. JULIUS NJOROGE**

**4. FRANCIS MAGICHU ..... RESPONDENTS**

**(An application for extension of time to file and serve  
the Record of Appeal from the Judgment of the High  
Court of Kenya at Nairobi (Lady Justice Ang'awa)  
dated 3rd December, 1998**

**in**

**SUCCESSION CAUSE NO. 1014 OF 1993)**

**\*\*\*\*\***

**R U L I N G**

This matter is placed before me pursuant to Rule 47(5) of the Court of Appeal Rules for hearing inter partes on the issue of urgency since I had declined to certify the same as urgent. I have now heard counsel for both sides. The Notice of Motion which the applicant wishes to be certified urgent is seeking the following orders:

*"1....*

*2. That this Court under its inherent power do call for the Court file in the Superior Court in H.C. Succession Cause No. 1014 of 1993 for the purpose of dispensing with attachment of copies of the Baptismal Card and Passbook as primary documents in the Applicant's Record of Appeal.*

*3. That this Court do dispense with the attachment of the Baptismal card and the Passbook as primary documents in the Applicant's Record of Appeal.*

*4. That this Honourable Court may be pleased to order that the Record of Appeal filed by the Applicant contemporaneously with this application be deemed to be duly lodged and competent*

without the Baptismal card and the Passbook.

5. That the time for instituting the Appeal be extended.

6. Time for service of the Memorandum of Appeal and Record of Appeal be extended."

That Notice of Motion will be based on the following grounds:

*"(i) The Applicant's previous appeal to wit, Court of appeal Civil Appeal No. 34 of 2000 was on 16-01-2001 struck out on the ground that the Record of Appeal omitted primary documents.*

*(ii) That after due diligence to retrieve the primary documents from the Superior Court it has come to the Applicant's notice that two of the primary documents namely, the Baptismal Card and the Passbook cannot be traced from the Superior Court Record by the Court Registry Officials.*

*(iii) That the Applicant is unable to include in the Record of Appeal the two missing primary documents namely the Baptismal card and the Passbook.*

*(iv) That if the Appeal is not lodged and/or instituted within the time ordered by the court, the Appellant shall be deemed to have withdrawn the Notice of Appeal and the Appeal as a whole.*

*(v) The applicant's appeal raises serious and substantial issues of law and in particular whether in the circumstances of the case trust arose so as to defeat the title of the Applicant to land title No. Githunguri/Ikinu/ 320."*

In view of the fact that two documents mentioned (Baptismal card and Passbook) cannot be traced then it would appear that the applicant's Notice of Motion should be dealt with quickly otherwise it would be an exercise in futility to entertain the application after the requisite period has expired. For that reason I am now certified that there is urgency in the matter. I therefore certify the applicant's Notice of Motion as urgent. Costs of this application will abide the outcome of the intended appeal.

**Dated and delivered at Nairobi this 4th day of May, 2001.**

**E. O. O'KUBASU**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**