

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
NAKURU
(CORAM: TUNOI, J.A (IN CHAMBERS))
CIVIL APPEAL (APPLICATION) NO. 125 OF 1999
BETWEEN

GRACE MWANGIAPPLICANT
AND
DAVID KAHIRA MUNGAIRESPONDENT

**(Application for extension of time to file Notice of
appeal out of time in an intended appeal against the
Judgment of the High Court of Kenya at Nakuru (Lady
Justice Nambuye) dated 10th May, 1994**

**in
H.C.C.C NO. 2 OF 1994)**

R U L I N G

Two prayers are sought in this application. One, that the Notice of Appeal filed on 24th September, 1998 be deemed to have been filed and served in time, and; two, that Civil Appeal No. 125 of 1999 be admitted out of time. In my view, I think, the applicant does not deserve my indulgence. There are no good reasons why I should exercise my discretion in her favour. There are good reasons for me so to hold. For example, the subject matter of the appeal is, indeed to say, trivial. The decretal sum involved is not much. Further, there is no serious point of law involved. Must the litigation be prolonged unnecessarily? Not so. It must come to an end.

The applicant has been guilty of laches all the way through since judgment was pronounced on 10th May, 1994. The application and the appeal so lodged have not been handled diligently. Though the Notice of Appeal was struck out on 22nd September, 1998, this application was only filed on 7th September, 2000. No explanation has been given to my satisfaction as to why it took so long to perfect the Notice. Even though the appeal has been filed, this was done without leave and in blatant breach of the Rules of the Court. It ought not in the first place to have been filed without validating the notice.

The fact that it is there in the Registry is not a ground for extension of time to file a Notice of appeal. I dismiss the application with costs to the respondent which I assess at Shs.5,000/=. This must be paid within 10 days hereof otherwise execution to issue. A right to file a reference is granted.

Dated and delivered at Nakuru this 28th day of September, 2001.

P.K.

TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

