

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL MISC.APPLICATION 212 OF 2001

1. ALBERT GIKUNDA

2. JOEL MURIUKI APPLICANTS

AND

EUNICE NGURUBI RESPONDENT

RULING

This is an application under Rule 4 of the Court of Appeal Rules. It is of course obvious that under r.4 this Court is being asked to exercise its unfettered discretion to allow a party to file a Notice of Appeal and Record of Appeal out of time. But this discretion must be exercised upon good reasons. The position here is that the applicant sought advice of counsel right from the commencement of the matter. An attempt to seek leave for extension of time was made but to a court which had no jurisdiction.

The matter then came up to the correct Court where the Notice of Appeal was struck out on 18th May, 2001. On that same date this application was filed. There is a long supporting affidavit in which the background to this matter is given. Then there is a replying affidavit which shows that there was some unexplained delay.

I have now considered what has been urged before me and bearing in mind that the applicant's wish to appeal had been demonstrated at a very early stage and that if there was any delay it was due to time taken in seeking advice and also due to the High Court file having been misplaced I think this is a proper case in which I should exercise my discretion in favour of the applicant.

The upshot of the foregoing is that this application is allowed and the applicant is to file a Notice of Appeal within seven days from the date of this ruling and then a Record of Appeal be filed within 21 days from the date the Notice of Appeal is filed. Costs of this application to be awarded to the respondent. Costs assessed at shs.5,000/= to be paid within 30 days from the date of this ruling in default execution to issue. Those will be my orders.

Dated and delivered at Nyeri this 23rd day of October, 2001.

E.O. O'KUBASU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR