



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, BOSIRE & O'KUBASU, J.J.A.
CIVIL APPLICATION NO. NAI 204 OF 1998**

BETWEEN

PETER MBURU ECHARIA APPLICANT

AND

PRISCILLA NJERI ECHARIA RESPONDENT

**(An application for extension of time in an intended
appeal from a judgment and decree of the High Court
of Kenya at Nairobi (Shields J) dated 27th October,
1993**

in

H.C.C.S. NO. 4684 OF 1987 (O.S.)

RULING OF THE COURT

We are asked to reverse the decision of a single member of this Court which decision extended time for the applicant to file his notice of appeal and a record of appeal out of time. We have said on numerous occasions that the discretion conferred on a single judge under Rule 4 is exercised on behalf of the court and on a reference from his decision, the full court cannot interfere with that exercise unless it be shown:

- (1) that in the exercise of the discretion the single judge took into account irrelevant matters;
- (2) that he did not take into account a relevant factor;
- (3) that he misapprehended the law applicable to the situation; or (4) that the decision is plainly wrong.

The learned single Judge took into account the age of the litigation and was clearly aware of the requirement that litigation ought to come to an end. Mr Nderitu agrees the Judge took into account relevant factors and no error of principle is alleged before us. It appears to us that what Mr Nderitu is complaining about is that having correctly directed himself on all these issues, yet the Judge should have refused to extend time. We do not think that is a matter on which we can interfere. There is no merit in this reference and we order it dismissed. The costs shall be in the appeal.

Dated and delivered at Nairobi this 18th day of October, 2001.

R. S. C. OMOLO

JUDGE OF APPEAL

S. E. O. BOSIRE

JUDGE OF APPEAL

E. O. O'KUBASU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR