

**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: TUNOI, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 148 OF 2001**

BETWEEN

**JACOB MWANGI H. MURIRA
JOHN WAMBUGU HADAD
WAWERU KARUKWA APPLICANTS**

AND

JOHN MWAGO KARIUKI RESPONDENT

**(An application for extension of time to file an appeal
out of time from Judgment of the High Court of Kenya
at Nairobi (Owuor, J.) dated 9th June, 1998**

in

H.C.C.APPEAL NO. 380 OF 1992)

R U L I N G

The facts giving rise to this application have been stated by Shah, J.A. and I need not rehash them here. It appears that they have their genesis in the long delay in delivering judgment in the superior court, which delay, Shah JA deemed inordinate and inexcusable. The applicants aver that they could not lodge the appeal within the period allowed by Shah JA because of illness and inability to raise fees both for the court and their counsel. The inability to raise fees, it is alleged, was occasioned by the said illness.

I have looked at the medical chits and considered the history of the suit. It is obvious that the first two applicants rely greatly on support from Mr. Karukwa in the institution of the appeal. His illness directly affected the ability to raise fees and hence the delay. The applicants have wedged a protracted battle to see that the delayed judgment was eventually delivered. Further, they have shown that they want this Court to finally settle the dispute. I believe that justice must prevail in their favour. The delay in lodging the appeal is unfortunate but cannot be said to be inordinate in the circumstances. I will exercise my discretion in favour of the applicants and grant the application as prayed. The appeal shall be lodged within 14 days hereof. The applicants shall pay costs to the respondent which I assess at Shs.5,000/=.

These shall be paid

Dated and Delivered at Nairobi this 14th day of November, 2001.

P. K. TUNOI
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JUDGE OF APPEAL

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

DEPUTY REGISTRAR