

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: BOSIRE, J.A.(IN CHAMBERS)

CIVIL APPLICATION NO. NAI 131 OF 1999

BETWEEN

1. NGUGI KIMUHU

2. NYANJUI KIMUHU

3. NDEGE KIMUHUAPPLICANTS

AND

1. WAGUTU MWANIKI

2. MIRIAM NYAKAIRORESPONDENTS

3.MWANIKI MBUCHA MWANIKI

Application for extension of time to file a notice of appeal and a record of appeal out of time from the judgment of the High Court of Kenya at Nairobi (Justice B. Tanui) dated 25th April 1996

in

H.C.C.C. No.6000 of 1985(O.S)

RULING

The three applicants brought action by Originating Summons seeking declaratory orders that they had become entitled to an interest in a parcel of land known as Ndarugu/Gakoe/205 by adverse possession and a further order that they be registered as owners thereof in place of the respondents as administrators of the estate of Wainaina Karanja alias Mwangi Wambucha, deceased, who was the registered owner of the land in question. The suit was dismissed by Tanui, J. and an appeal against that decision, to wit Civil Appeal No. 155 of 1998, was struck out on 15th December, 1998, for incompetence. This application was filed on 8th June, 1999, about six months after that. It is an application for an order extending the time within which to file and serve a notice of appeal and a record of appeal out of time.

The affidavit in support of the application states that after the applicant's appeal was struck out they moved the superior court for leave to appeal which leave was granted on 27th January, 1999. There is however no explanation as to the delay of over four months in bringing this application. That is so notwithstanding that on 7th February 2000, I granted leave to the applicants to file a supplementary affidavit on the matter. In view of that, I do not think that the applicants themselves have treated this matter as being urgent and I see no reason for treating it as such. I decline to grant the certificate of urgency.

Dated and delivered at Nairobi this 15th day of February 2000.

S.E.O. BOSIRE
JUDGE OF APPEAL

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

DEPUTY REGISTRAR