



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: SHAH, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI. 287 OF 1999  
BETWEEN**

**WANJIKU MUHIA.....APPLICANT  
AND  
NGANGA MUTURA.....RESPONDENT**

**(An application for extension of time to file a notice  
and Record of appeal from a judgment and decree of  
the High court of Kenya (Mr. Justice Waweru( dated  
16th October, 1998**

**in  
H.C.C.A. NO. 284 OF 1996)**

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**RULING**

I have before me an application, brought under rule 4 of the Rules of this Court (the Rules) seeking extension of time to "file a notice of Appeal and Record of Appeal out of time."

The judgment that the applicant seeks to appeal against was delivered by the superior court (Waweru, J) on 16th October, 1998. The applicant filed her notice of appeal, in time, on 27th October, 1998. She applied for copies of proceedings and judgment, in time, on 27th October, 1998. These copies were made available to her on 29th September, 1999. She had time until 28th November, 1999 to lodge her record of appeal. She did not do so. Instead she made this application on 8th October, 1999. She had been acting in person after the judgment was delivered.

It seems to me that she had no knowledge of the fact that she could make use of the proviso to rule 81 of the Rules, and lodge her appeal in time, until 28th November, 1999. Otherwise she would not have lodged this application. At the time she lodged the application the same was probably premature but that is all water under the bridge now. 28th November, 1999 is now past.

Apart from that she faces another hurdle. She did not serve the notice of appeal on the respondent's advocate until 14 days after filing thereof. This was pointed out by Kinuthia, counsel for the respondent.

Mr. Muriithi who now appears for the applicant then made an informal application before me under rule 42(3)(a) of the Rules for extension of time by seven days so as to deem it that the notice of appeal was served in time.

I think it is prudent to deal with that informal application. At the material time the respondent, who is a peasant lady, was acting in person. She was probably not aware that she had to serve a copy of the lodged notice of appeal within seven days. Arising improvisus the oral application is not such as to merit a rejection forthwith. If she were not to get that extension her present application would be futile even if granted. In the exercise of my discretion I allow that oral application so that I can validly consider her main application

The appeal she intends to lodge is a second appeal. The Magistrate's court ordered her eviction from the land which she was occupying with her children. Her husband is dead. He died in 1981. Her husband's brother was originally admittedly holding a larger portion of land (the suit land forms a part thereof) for himself and in trust for his three brothers. He said in the other courts that the three brothers sold their portions of land to him so that he became registered as absolute proprietor of the whole parcel of land, including the portion occupied by his brother, the deceased husband of the present applicant. The

applicant, he says, could not therefore have any title or right to the suit land, as she cannot derive any title from her late husband. He sued her as trespasser etc, and the matter before me is that the Resident Magistrate's court at Sheria House, in another suit decreed eviction of the applicant's husband in 1986 when he was already dead.

The learned Judge took into account the decree of the Sheria House court (R.M.C.C. NO. ELD.2 of 1983) to say that the applicant had no right to be on the suit land. The learned Judge rejected, as did the Magistrate's court (not the Sheria House Court), her claim for adverse possession. The applicant says that she is in occupation of suit land since 1971 whereas the respondent says that she was in such occupation since 1991.

What the applicant proposes to file is a second appeal. She has a right to do so provided she can base it on any ground of law or of mixed law and fact. I am not prepared to say that her proposed appeal is totally unarguable as Mr. Kinuthia submits.

Mr. Kinuthia took issue on the letter by the applicant bespeaking copies of proceedings and judgment to enable her to lodge the appeal. He says that that letter was not copied to him. The applicant says it was copied to him. I cannot decide that dispute now or here. But if I extend the time that issue will fall by wayside. Mr. Kinuthia also takes issue on the fact that she could have lodged her appeal by 28th November, 1999. I have already said that she was probably not aware of the proviso to rule 81 of the Rules.

She has not taken out letters of administration, Mr. Kinuthia argued. I am not certain that she needs the same to claim her possessory right, if any, as opposed to proprietary rights.

On an overall and full consideration of the plight the applicant finds herself in, and seeing that this is a family dispute regarding what was family land, I am minded to exercise my discretion to enable her to lodge the appeal as I have already extended time for service of the original notice of appeal. The prayer for extension of time to lodge the notice of appeal does not fall for consideration. She may lodge her record of appeal within the next 30 days. I would order also that the costs of this application be costs in the intended appeal. This I do as the dispute is a family dispute.

**Dated and delivered at Nairobi this 29th day of March, 2000.**

**A.B. SHAH**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**