

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

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

CIVIL APPLICATION NO. NAI 267 OF 1999(KSM. 17/99)

BETWEEN

DANIEL MOMANYI IST APPLICANT

FREDRICK O. OYOO 2ND APPLICANT

AND

SAMSON ONYANGO ALAI (acting as personal representative of the Estate of JULIA AUMA ANYANGO (deceased) IST RESPONDENT

JAMES DIRUGA AREMO 2ND RESPONDENT

(Application for extension of time to lodge notice of appeal and record of appeal in an intended appeal from judgment and decree of the High Court of Kenya at Kisumu dated 28th May 1997

in

Kisumu H.C.C.C. 218 of 1991)

RULING

It may well be that the case has been going on for between nine and ten years as Mr Kasamani for the respondents states. I also agree that litigation ought to have an end. But in the present application before me, the truth is that the applicants' previous appeal was in fact struck out on the 23rd June, 1999. True the appeal was from a judgment dated 28th May, 1997, but there is no evidence before me that the time taken between the reading of the judgment and the striking out of the appeal was blamable upon the applicant. It is conceded that the delay between the striking out and the lodging of the present motion was not in any way inordinate. Having taken everything into account, I think it would be wrong for me to deny the applicants the extension they seek.

Accordingly I allow the motion to this extent:

(i)the applicants shall file and serve their notice of appeal within 14 (fourteen) days of the date

(ii)the rehearredo fo.f appeal must be filed and served within twenty one days from the date the notice of appeal is lodged in court.

(iii)I however refuse to order that the notice of appeal be not served on the third respondent James Dirunga Aremo. The full court thought he was a party directly affected by the appeal and that being so, he must be served.

(iv)the costs of this motion shall be in the intended appeal. These shall be my orders.

Dated and delivered at Kisumu this 21st day of March, 2000.

R.S.C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR