



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: KWACH, J.A (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI.13 OF 2000 (5/2000 UR)

BETWEEN  
MBO-I-KAMITI FARMERS CO. LTD ..... 1ST  
MBO-I-KAMITI FARMERS CO. LTD.....2ND  
HARRISON GICHARU NG'ANG'A.....3RD  
EDWARD NDUNGU MEREKA.....4TH  
JOSEPH KIMANI MBUGUA.....5TH  
GEOFFREY NGIGI MWANGI.....6TH APPLICANTS  
KARORI MANYEKI  
AND  
SIMON MWANGI NGERU.....1ST  
THUO MATHENGE.....2ND  
JOSEPH GITHUA MWANGI.....3RD  
DAVID MUTURI GACHUIRI.....4TH  
JOHNSTONE KIIYURU NJOROGE.....5TH  
GRACE MUTHONI GAKUMO.....6TH  
PHILIP MAINA WAWERU.....7TH RESPONDENTS

(Being an application for extension of time to file  
an appeal out of time against an Order of Mandamus  
issued by the High Court of Kenya at Nairobi (Hon.  
Justice Oguk) dated 19th July, 1999

in  
H.C. MISC. APPLICATION NO. 846 OF 1999)

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**RULING**

This is an application under rule 4 of the Court of Appeal Rules (the Rules) for extension of time to lodge a Notice of Appeal and a Record of Appeal . The application has been brought by Mboi Kamiti Farmers Company Limited (the Company) , Harrison Ng’ang’a, Edward Mere ka, Joseph Mbugua, Geoffrey Mwangi and Karori Manyeki (the applicants) . The decision against which they want to appeal was given by Oguk J on 19th July, 1999.

*Simon Ngeru, Thuo Mathenge, Joseph Mwangi, David Gathuri , Johnston Njoroge, Grace Gakomo and P hilip Waweru (the respondents)* claimed to have been elected as directors of the Company at a Special General Meeting of the members. Apparently they were refused registration by the Registrar of Companies and on 13th July, 1999 they filed a Notice of Motion in the superior court seeking an order of mandamus to compel the “**Registrar - General**” to register them as directors of the Company. The applicants who were the directors at the time were not made a party to the proceedings nor was the Company joined or served.

The application was heard and determined without the applicants being given an opportunity to be heard. The applicants learnt about the decision soon after it had been made and instructed an Advocate to act for them. Instead of filing a notice of appeal under **rule 74** of the Rules the Advocate decided to apply to the superior court to set aside the decision. That application was dismissed by Mitey J who in an attempt to inject some semblance of order into this turbulent company ordered fresh elections to be held and I understand that these are underway. Having failed to have the decision of Ojuk J set aside the applicants now want to go back to the starting line and lodge an appeal.

*Mr Ngatia* for the applicants submitted that the intended appeal raises important issues of law one of which relates to the validity of the procedure used by the respondents to obtain the order of mandamus. And also the fact that the applicants were denied a hearing. All this may be true but the fact remains that the elections which triggered off the present dispute are now water under the bridge and were the applicants to succeed in their intended appeal, it would be just a pyrric victory.

In the final analysis, I agree with Mr Kosgei , for the respondents, that the delay in bringing this application has not been satisfactorily explained. For that reason, I decline to exercise my discretion in favour of the applicants and dismiss the application with costs.

**Dated and delivered at Nairobi this 17th day of March, 2000.**

**R. O. KWACH**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**