

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI 49 OF 2000
BETWEEN**

**GEORGE MWANGI KARANJA
PETER NDEGWA KAMONDEAPPLICANTS
AND
NELIUS WAIRIMU KIUNJURIRESPONDENTS**

**(Application for extension of time to file out of time an
intended appeal from a judgment of the High Court of
Kenya at Nairobi (Mbitio J) dated 1st November, 1996**

**in
H.C.C.C. NO. 33945 OF 1989)**

R U L I N G

The applicants' previous appeal was struck out on 17th February, 2000. It was struck out because the record did not contain certain essential documents.

The motion before me was lodged on 25th February, 2000, approximately one week after the previous appeal had been struck out. I do not think it would be right for me to refuse the motion on the basis that this is the second time such an application is being made. That is a factor I have to bear in mind but I do not think it is a conclusive factor in favour of the respondent and against the applicants. Again the reason as to why the previous appeal was struck out cannot be used as a bar to this kind of motion. The applicants were punished for that reason when the previous appeal was struck out. There has been no sort of delay whatever in this matter and that being my view of it, I allow the applicants' motion and make the following orders:

(i)The applicants must file their notice of appeal within seven days of the date hereof and serve it on the respondent within four days from the date of its filing. (ii)The applicants must thereafter lodge their record of

appeal within fourteen days from the date of filing the notice of appeal. (iii)The costs of this motion assessed at Shs.3,000/= must be paid by the applicants to the respondent within thirty days of the date hereof and in default of payment the respondent shall be at liberty to execute. Those shall be my orders in the matter.

Dated and delivered at Nairobi this 17th day of May,

2000.

R. S. C. OMOLO -----

JUDGE OF APPEAL

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

DEPUTY REGISTRAR