



IN THE COURT OF APPEAL

AT NYERI

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

CIVIL APPLICATION NO. NAI. 368 OF 1999 (NYR.25/99)

BETWEEN

LEWIS WANYOIKE THROUGH HIS

**PERSONAL REPRESENTATIVE ELLEN WAHITO
WANYOIKE.....APPLICANT**

AND

MONICA WANJA.....RESPONDENT

(Application for extension of time to file and serve a

**notice of appeal and record of appeal against the
ruling of the High Court of Kenya (M.A. Ang'awa, J)
dated on 6th April, 1995**

in

H.C.C.S. NO. 191 OF 1987)

R U L I N G

The applicant Ellen Wanyoike, in her capacity as the personal representative Lewis Wanyoike (deceased) seeks extension of time, under rule 4 of the Rules of this Court, to lodge her notice of appeal and record of appeal out of time. The first appeal was filed by Lewis Wanyoike who died by the time that appeal came up for hearing. That was Civil Appeal No. 159 of 1995. It was struck out on 14th October, 1996 by the Court, as although the ruling appealed against was delivered on 26th March, 1995, a copy thereof in the record of appeal was dated 6th April, 1995.

The ruling of the superior court sought to be appealed against was delivered by the superior court (Ang'awa, J) on 26th March, 1995 but was unfortunately dated 6th May, 1995. How it came to be so dated is not quite clear but the mistake is apparently attributed to the learned Judge herself. Nothing turns on that mistake now.

The application before me was lodged on 21st December, 1999 some more than 4 years after the first appeal was struck out. The delay in filing this application is beyond all reasonable norms and bounds. Mr. Duncan Mindo, counsel the applicant, in a passionate plea, has urged me to accept his explanation for the delay. He says that as the original appellants were dead there was no move he could make in this Court until after the time letters to administer the estate of Lewis Wanyoike were obtained and until after the error in dating the ruling was corrected. He also stated, all under oath, that many applications (I presume interlocutory) in connection with the original suit had "distracted" the applicant's attention. The original suit commenced in 1987 some 13 years ago. Eventually

the dispute was referred to arbitration by a panel of elders. That award was read by Tunoi, J (as he then was) to the parties on 1st October, 1992.

On 19th October, 1992 Lewis Wanyoike filed an application to set aside the award. Tunoi, J dismissed that application on 4th DAe cenmobteirc,e 1o9f9 2a.ppeal lodged on 8th December, 1992 against the refusal to set aside the award was apparently not pursued further. Lewis Wanyoike had at that time, sought leave to appeal from the superior court to this Court. It was refused. He then sought such leave from this Court. That was rejected on 29th October, 1993. He then, in person, filed an applicaiton for review of the order of Tunoi, J. It was argued, however, by counsel, Mr. Mungai. The application for review was dismissed by the superior court on 22nd November, 1993. After some more intervening applications the superior court entered judgment in terms of the award on 28th June, 1994.

Yet again Lewis Wanyoike lodged an applicaiton for review of orders of 28th June, 1994. He withdrew that applicaiton and yet another one was lodged on 2nd February, 1995 seeking a review of the judgment. That application was dismissed by Ang'awa, J on 6th April, 1995. The suit between the parties is but one example of the tortuous manner in which land disputes go on endlessly. Whilst I appreciate the land is a matter very dear to the hearts of Kenyans I am a firm believer in the adage that justice delayed is justice denied. The respondent has had a decree which she wants to execute but is tied up in the labyrinth of a mass of applications.

With this background I would consider the explanation for delay offered by Mr. Mindo. It is not enough to say that there was delay in obtaining letters of administration. Such letters could have been obtained immediately after the original appeal was struck out. Obtaining of letters "ad colligenda bona" is not a difficult task. I am not told why such a limited grant was not obtained to enable the applicant to lodge her application. In any event, letters of administration were granted on 18th September, 1997. There is no good reason shown why the applicant waited two more years, still, to lodge this application.

I am not satisfied that the error in the dating of the judgment could take three years or more to be corrected. It appears to me that there was no seriousness on the part of the applicant to have that error corrected. Such correction can be done almost immediately under sections 99 and 100 of the Civil Procedure Act.

Nor am I satisfied that other interlocutory applications could bar the path of the applicant in moving towards lodging an application for extension of time.

The suit land has been ordered to be sub-divided between the members of the litigating family and Lewis Wanyoike (now his Estate) has been ordered to receive a bigger portion (by one-half of an hectare) of the land.

This application in all circumstances narrated can meet only one fate. It must be dismissed with costs. It is so dismissed.

Dated and delivered at Nyeri this 9th day of June, 2000.

A.B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.