

REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

CIVIL MISC APPL 105 OF 00

BETWEEN

JOHN MUNGAI MURANGO

JEREMIAH KIARIE MUKOMA APPLICANTS

AND

SAMSON NJENGA MUNGAI RESPONDENT

RULING

On 14th February, 2000, this Court struck out Civil Appeal No. 104 of 1999 on the ground that the record of appeal did not include the documentary exhibits which were put in evidence at the trial of the matter before the superior court. This application was registered on 14th April, 2000. Mr Njau, for the respondent, contends that the delay of 59 days has not been explained and is too inordinate as to work against the applicants.

I am satisfied on perusal of the affidavits tendered before me by both the applicants and the respondent that the applicants have not been indolent in bringing this application. There is evident activity on their part since 17th March, 2000.

The applicants have expressed their wish to pursue their appeal. They have not been guilty of any serious unexplained laches. The dispute concerns land. The parties are family members. The dispute appears acrimonious. It is only fair and just that the parties should be allowed to canvass the dispute before this Court.

I exercise my discretion in favour of the applicants and grant leave to file a fresh Notice of Appeal and record of appeal against the judgment and decree made by the High Court on 8th May, 1998, out of time.

The applicants shall file the Notice of Appeal within 7 days hereof and the Record of Appeal within 21 days thereafter. The applicants shall pay costs of this application assessed at Shs.5,000/= to the respondent within 10 days hereof.

Dated and delivered at Nairobi this 26th day of July, 2000.

P. K. TUNOI -----

JUDGE OF APPEAL

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

DEPUTY REGISTRAR