

IN THE COURT OF APPEAL

AT NAKURU

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

CIVIL APPLICATION NO. NAI. 124 OF 2000 (NAK 16.00)

BETWEEN

MWANGI KINYUAAPPLICANT

AND

1. WAWERU KINYANJUI

2. DIRECTOR OF SETTLEMENT

3. MACHIRA MACHARIA

4. DANIEL KOGI GITHU

5. DANIEL MUHIARESPONDENT

R U L I N G

In this application expressed to be brought under rule 4 of the Rules of this Court, I am asked to exercise my discretion in favour of the applicant and grant him extension of time to file and serve the notice of appeal and record of appeal in an intended appeal from the judgment of the superior court dated 8th December, 1993. This application has been lodged pursuant to the order of this Court which struck out Civil Appeal No. 279 of 1999 on 25th February, 2000. The delay involved herein is 58 days and is largely attributed to the applicant's inability to raise the requisite money for fees.

The subject matter of the dispute is land, which in my view, is one of the factors which much weigh heavily in deciding whether to grant the application or not. The delay as far as I am concerned has been explained to my satisfaction. I agree with Shah J.A. in Civil Application No. 241 of 1999 (Nai.) that the poverty of a litigant ought to be given serious consideration by a single judge in such a matter as a land dispute. A litigant should not be denied access to the highest court on the land because he is poor. I also think that the state of the mind of the applicant is a contributory factor in the delay. This inability, due to a disease of the mind, has hampered the speedy process of the intended appeal.

To my satisfaction, there is a genuine desire on the part of the applicant to pursue the dispute to its logical conclusion. Accordingly, I allow the application and grant the extension sought. The Notice of Appeal shall be filed within 7 days hereof. The record of appeal shall be lodged in 21 days thereafter. The applicant shall pay each respondent costs assessed at Shs.2,000/- within 15 days hereof.

Dated and delivered at Nakuru this 29th day of September, 2000.

P. K. TUNOI

**JUDGE
I certify
DEPUTY**

that this is a true copy of

**the original.
APPEAL
REGISTRAR.**