

IN THE COURT OF APPEAL
AT NAIROBI
(Coram: Gicheru, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 242 OF 1999 (UR.95/99)

BETWEEN
KIU RANCHING AND FARMING CO-OPERATIVE SOCIETY
LIMITED.....APPLICANT

AND

KISEE MWEU AND 19 OTHERS.....RESPONDENT

(Application for extension of time to file an intended appeal from the judgment of the High Court of
Kenya at
Nairobi (Mwera, J.)
in
H.C.C.C. NO. 2749 OF 1981)

RULING:

Civil Appeal NO. 17 of 1993 was on 7th February, 1995 struck out by this Court for being incompetent in that a certified copy of the decree appealed from was not part of the record of that appeal. Consequent thereto, the applicant by a Notice of Motion dated 2nd September, 1999 and filed in this Court on 6th September, 1999 now seeks extension of time within which to lodge the Notice and Record of Appeal. This, it will be observed, is after a lapse of 4 years and 8 months.

The applicant's explanation for this delay is that it was misled by its counsel who represented to it that an appeal had subsequently been lodged and indeed it had in that regard paid some legal fees. It was not until May, 1999 that the applicant found that no appeal had been lodged by its counsel and thereafter embarked on trying to obtain its files from counsel which it received during the month of July, 1999. The applicant then sought the services of another counsel.

According to the respondent, however, the execution of the decree intended to be appealed from has already been effected and the litigation in respect thereof which started some 19 years ago in 1981 should be brought to a close. In any event, the delay in bringing this application has not been adequately explained.

It is not in doubt that the delay of 4 years and 8 months is without sufficient explanation intolerably inordinate. From the respondent's replying affidavit, after the applicant's appeal was struck out on 7th February, 1995, there appears to have been a flurry of activities in the superior court concerning the subject-matter of the litigation between the parties which was **Land Reference NO. 7612** culminating in its subdivision into **LR NO. 7612/1** and **LR NO. 7612/2** the former being transferred to and registered in the applicant's name while the latter was transferred to and registered in the names of the respondents. Yet, this notwithstanding, the applicant does not seem to have demonstrated aggressiveness in having its intended appeal take off the ground.

Failure by the applicant's counsel to set in motion appropriate steps for the lodging of its intended appeal is no excuse for its near inactivity in the pursuit of its intention to lodge an appeal against the decision of the superior court which was given on 14th January, 1992 after its original appeal against the said decision was struck out by this Court as is mentioned above. In these circumstances, I am disinclined to exercise my discretion under **rule 4** of the Court of Appeal Rules. Consequently, the applicant's application for extension of time within which to file a Notice and Record of Appeal must fail and is dismissed with costs to the respondents.

Dated and delivered at Nairobi this 13th day of October, 2000.

J.E. GICHERU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR