



**IN THE COURT OF APPEAL  
AT NAIROBI**

**CORAM: BOSIRE, J.A. (IN CHAMBERS)**

**CIVIL APPLICATION NO. NAI 327 OF 2000 (160/2000 UR)**

**BETWEEN**

**FATHER MAKARIOS NGUGI**

**FATHER PAUL NJOROGE**

**GEOFFREY MUORIA .....APPLICANTS**

**AND**

**THE REGISTRAR OF SOCIETIES**

**JOHN G. KIMANI**

**MOSES N. GICHUHI**

**ZADOCK O. OLOO**

**FRED KAGO**

**GEORGE ONYANGO**

**ROBERT KABURU.**

**NIPHON N. K. MAGU .....RESPONDENTS**

**(Appeal from a ruling of the High Court of Kenya at Nairobi (Githinji J) dated 9th February, 1999  
in**

**H.C.MISC.C. NO. 537 OF 1998)**

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**RULING**

The applicants' **Civil Appeal No. 63 of 1999** was struck out on 30th October, 2000 for incompetence. Thereafter, on 15th November, 2000, the applicants brought this application wherein they seek an order under **rule 4 of the Court of Appeal Rules**, extending the time within which to file and serve a fresh notice of appeal, and thereafter a memorandum and record of appeal.

It is trite law that an appellant whose appeal has been struck for incompetence, may restart the appellate process provided he seeks the leave of the Court to do so promptly.

The applicants brought this application about 15 days after their appeal was struck out. A period of 15 days is not inordinate and I would be minded in the circumstances to extend the time as prayed. Moreover, Miss Mbutia for the 2nd to 7th respondents does not oppose the application quite properly so in my view.

As for the remaining two respondents, they were duly served with the application and too, the hearing notice for today's hearing but have not appeared. The rebuttable presumption which arises is that they do not wish to oppose this application.

In the result, I grant the applicants an extension of 10 days within which to file and serve a fresh notice of appeal, and a further 30 days within which to file and serve a record of appeal. The 2nd to 7th respondents shall have the costs of the application assessed at KShs.7,000/-, to be paid within ten days and in default, execution to issue.

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

**S. E. O. BOSIRE**

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**JUDGE OF APPEAL**

I certify that this is

a true copy of the original.

**DEPUTY REGISTRAR**