



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA PEAL AT NAKURU**

Civil Appli Nai 333 of 2005 (NAK.17/2005)

BETWEEN

EPHRAIM KANUTHU MWANGI.....APPLICANT

AND

MUTHIRITHIA FARMERS CO. LTD.....1ST RESPONDENT

JOHN WAIGANJO KARIUKI (as the Legal Representative of the Estate of

ESTHER WANGARI KARIUKI (deceased).....2ND RESPONDENT

*(An application for extension of time within which to file and serve a record of appeal out of time
from the Judgment & decree of the High Court of Kenya at*

Nakuru (Rimita J) dated 22nd February, 2001

in

HCCC NO. 425 OF 1994

RULING

By this application expressed to be brought under **rule 4** of the Rules of this Court, the applicant seeks an extension of time within which to file and serve a record of appeal from the decree and judgment of Rimita J. given on 22nd February, 2001.

The applicant placed before me the following facts. Judgment, the subject matter of the intended appeal was given on 22nd February, 2001. Being aggrieved by the said decision, the applicant immediately and on the same day, applied for the copies of the proceedings and on the following day lodged a Notice of Appeal. The letter bespeaking of the proceedings was copied to the Counsel for the respondents. It is apparent that nothing of the proceedings was heard and there was no communication from the Deputy Registrar until 15th September, 2003, when Messrs Mirugi Kariuki & Co Advocates, for the applicant, were informed that the proceedings had been ready way back long ago as from 19th June, 2001. The letter read as follows:

“I hereby confirm that proceedings in above quoted suit were ready for your collection as from 19th

June, 2001 and that you were notified vide letter Ref. NAKU/HCCCA 425/94 dated 19th June, 2001, copy of which is herewith annexed for your reference.

You can now collect the said proceedings upon payment of further typing charges of Kshs. 1,800/-“

It has not been shown to me that Messrs. Mirugi Kariuki & Co Advocates did not receive the above letter. Further, there is no indication on record to show that the applicant’s counsel or indeed the applicant himself checked or inquired of the progress of the proceedings by a reminder, letters or by a casual visit to the Registry. The applicant instead went into a deep slumber and as a result, there is a long period of unexplained delay amounting to 896 days.

It cannot by any stretch of imagination be said that the delay is not inordinate. It certainly is.

Despite this, the applicant did not file an application for extension of time to lodge an appeal until 17th November, 2003. The delay here, again, was 61 days. This, too, is inordinate and no explanation has been proffered to my satisfaction.

The Letters of Administration ***ad Litem*** were issued to the 2nd respondent on 27th May, 2005 but there is nothing to show that the Grant was issued or collected late. The record shows that this application was not filed until 5th December, 2005 after a delay of 191 days. This, also, is in my view inordinate and without a reasonable explanation.

There is no doubt whatsoever that the applicant has been guilty of blatant laches and there is no reason whatsoever for me to exercise my discretion in his favour. If I did so I would be aiding an indolent litigant.

True, the dispute involves land but it is against public policy to procrastinate on or to unnecessarily prolong disputes. The applicant through his delays is late to mount an appeal on the dispute for over five years. It is noted that the dispute has been in Court for the last 12 years. It should be brought to rest.

In my view, if the application is allowed, the respondents would be greatly prejudiced and no costs would adequately compensate them.

I refuse to exercise my discretion in favour of the applicant. I dismiss the application with costs which I assess at shs. 10,000/-. These should be paid within 14 days hereof.

Dated and delivered at Nakuru this 3rd day of March, 2006

P. K. TUNOI

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JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR