



Case Number:	Civil Appli 35 of 2006
Date Delivered:	27 Apr 2006
Case Class:	Civil
Court:	Court of Appeal at Nairobi
Case Action:	Ruling
Judge:	Philip Kiptoo Tunoi
Citation:	Josphat Kariuki Kamau v Pias Nungari Kamau & another [2006] eKLR
Advocates:	none
Case Summary:	[Ruling] Civil Procedure – appeal – application for leave to file and serve notice and record of appeal out of time – delay of one year - duty of the applicant to give a satisfactory explanation for the delay - Court of Appeal Rules rule 4
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

NAIROBI

Civil Appli 35 of 2006

JOSPHAT KARIUKI KAMAU.....APPLICANT

AND

1. PIAS NUNGARI KAMAU.....1ST RESPONDENT
2. ERNEST MWAURA KAMAU.....2ND RESPONDENT

(An application for leave to file notice and record of appeal out of time from the Ruling of the High Court of Kenya at Nairobi (Etyang, J) dated 21st March, 2000

in

H.C.SUC. C. NO. P&A 1123 of 1989)

R U L I N G

The applicant seeks an order under *rule 4* of the Rules of this Court for extension of time within which to lodge and serve a Notice of Appeal and a Record of Appeal from the decision of *Etyang, J.* in Succession Cause No. 1123 of 1989, given on 21st March, 2000.

It is apparent that there has been a grave and inordinate delay in lodging the appeal or the application which would have enabled the applicant to file a proper appeal. The applicant explains this by saying that it was caused by “professional negligence and fault of legal counsel” to pursue the previous pending application – i.e. to put his house in order. But, the applicant went to sleep for a year and did not take any steps as directed by the learned single Judge of this Court. The delay is not explained to my satisfaction.

Also, the record shows that the applicant is complaining against the ruling made on 21st March 2000 and no Notice of Appeal has been availed to me to show that it was filed within the prescribed time. The one on record shows that it was filed on 6th February, 2001 against a ruling made on 1st February, 2001. There is no such ruling and the Notice thereto is irrelevant to this application.

The procrastination in bringing this application is prejudicial to the respondents. To prolong the dispute by a frivolous appeal, also, is detrimental to the interests of both parties. The estate has been fully administered according to the Order of *Etyang, J* and the applicant is collecting rents.

The inordinate delay involved makes me not exercise my discretion in favour of the

applicant.

I dismiss the application with costs.

DATED and DELIVERED at NAIROBI this 27th day of April, 2006.

P.K. TUNOI

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR



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