



Case Number:	civil misc appl 71 of 94[1]
Date Delivered:	17 Nov 1994
Case Class:	Civil
Court:	Court of Appeal at Nairobi
Case Action:	-
Judge:	Philip Kiptoo Tunoi
Citation:	Fredrick G K Waithaka v Thuo Kamau & another [1994]eKLR
Advocates:	-
Case Summary:	-
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Allowed
History County:	Baringo
Representation By Advocates:	Neither party represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI
CORAM: TUNOI, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI 71 OF 1994

BETWEEN
FREDRICK G.K. WAITHAKA APPLICANT
AND
THUO KAMAU
DAVID NJUGUNA THUORESPONDENTS

(Application for extension of time to file an appeal from
a judgment of the High Court of Kenya at Nairobi
(Justice Mbiti) dated 6th June, 1991
in
H.C.C.C. NO. 627 OF 1987(OS))

RULING

This is an application for extension of time to file an intended appeal against the judgment of the superior court (Mbiti J) dated 6th June, 1991. Under rule 4 of the Court of Appeal Rules, this Court is empowered to enlarge time on any grounds, it seems just. Thus, there is conferred upon the court unlimited discretion to extend time subject only to the requirement of justice. I will now attempt to apply this principle so far as this case is concerned.

The subject matter of the suit is the superior court and in the intended appeal is land which has been divested of the applicant under the doctrine of adverse possession. It is only fair and just that he should be allowed to exhaust all the legal avenues open to him before a final decision is made.

It is common ground that there has been an inordinate delay of well nigh three years in instituting the appeal. The fact of the delay has been placed squarely at the door of the applicant's counsel. The applicant, too, is partly guilty of indolence. However, it is now settled that an appeal should not be negated by the mistakes of counsel.

In all the circumstances, I allow this application and extend time for filing the appeal by 14 days from today. The costs of this application will be the respondents' costs in the appeal in any event.

Dated and delivered at Nairobi this 17th day of November, 1994.

**P. K. TUNOI
JUDGE OF APPEAL**

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

DEPUTY REGISTRAR



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)