**Muli v Kituku**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of ruling:** 5 March 2004

**Case Number:** 168/03

**Before:** Omolo JA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*Appeal – Time – Extension of time – Mistake of advocate – Whether mistake of advocate in applying for*

*leave to appeal against a decree to be borne by client – Decree – Whether leave to appeal required –*

*Rule 4 – Court of Appeal Rules.*

**Editor’s Summary**

The Applicant brought an application in the Court of Appeal under rule 4 of the Court’s Rules seeking extension of time to file notice of appeal and record of appeal out of time. The Applicant’s advocates had misapprehended the nature of the decree sought to be appealed and mistakenly thought that it was an order from which leave to appeal had to be sought from the High Court. The decree concerned a land matter whereby judgment was given in favour of the Respondent with the Appellant’s counterclaim being dismissed. The Appellant’s advocates proceeded to seek leave to appeal from the High Court which was also mistakenly granted on condition that the appeal be lodged within a specified time. On failure to comply with the time specified, the Applicant made the present application.

**Held** – A decree does not require leave to appeal. The Applicant’s advocates made a mistake of law by applying for leave to appeal at the High Court. This would not however shut out the Applicant. The time within the Applicant was to file her record of appeal would be extended by 21 days.

Application allowed.

**No cases referred to in ruling**