

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

CIVIL MISC. APPL. CASE NO. 120 OF 2018.

DOMIAN MARK KONDOA.....APPLICANT

VERSUS

IRENE LUMUMBA.....RESPONDENT

RULING

This is an application dated 23.7.2018 by the applicant brought under Section 1, 1a, 1b, 3, 3a, 63e and Section 79g of the Civil Procedure Act Chapter 21 of the Laws of Kenya and all the other enabling Provisions and powers of the Law. Seeking orders that;

- 1. The applicant be granted leave to file his intended appeal out of time.***
- 2. The costs and incidentals in this application to abide by the result and out come of the intended appeal or as the court may order.***

The application premised on the ground that the applicant was aggrieved by the decision of the Deputy Commissioner's verdict dated 2.5.2008; that he sought for the proceedings and certified copy of verdict which was supplied after the appeal period had expired and that the verdict related to validity of a customary marriage and lack of locus of Respondent to celebrate another marriage under the marriage Act, and that the delay was not inordinate and is excusable.

The Respondent Irene Lumumba opposed the application and filed Replying Affidavit. Respondent opposed the application on the ground that no good reason has been shown for not filing application within time and that the intended appeal is hopeless and frivolous.

I have considered the application and submissions. Although it is true that time to file the appeal had lapsed, this court has jurisdiction in appropriate cases grant leave to a party who intends to appeal out of time. Upon this party giving good explanation for delay. The reasons advanced by the applicant for this delay are plausible.

I allow the application and direct the applicant to file the intended appeal within 30 days from todays date.

Dated and Delivered at Bungoma this 30th day of May 2019.

S.N. RIECHI

JUDGE