



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC APPLICATION NO. 542 OF 2018**

**OBIERO BOGONKO PAUL ..... APPLICANT**

**VERSUS**

**MUTHUA GEORGE .....1<sup>ST</sup> RESPONDENT**

**PAUL MUTURI GICHEHA .....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant *Obiero Bogonko Paul* in his Notice of Motion dated 25<sup>th</sup> October 2018 seeks that he be granted leave to file an appeal against the ruling of *Hon. A M Obura (Mrs)* in Milimani CMCC No. 2108 of 2012 out of time.

2. In the grounds supporting the motion and in the supporting affidavit, the applicant avers that he is desirous of filing an appeal against the trial court's ruling dated 7<sup>th</sup> August 2018 which dismissed his suit; that the delay in filing the appeal was not deliberate but was caused by the trial court's delay of about 30 days in supplying him with a certified copy of the impugned ruling; that his intended appeal has high chances of success and if the application is not allowed, he will suffer great prejudice.

3. The application is not opposed. The respondent despite being duly served with the application and a hearing notice did not file any response to the application.

4. I have considered the application and the depositions in the supporting affidavit as well as the annexures thereto.

*Section 79 G* of the *Civil Procedure Act* prescribes the time within which appeals from decisions or orders of the subordinate court to the High Court should be filed. Such appeals should be filed within a period of 30 days but in the event that an aggrieved party is unable to file his appeal within the prescribed time, the proviso to *Section 79 G* gives the court unfettered discretion to enlarge the aforesaid time provided sufficient cause is shown for not filing the intended appeal within time.

5. In this case, the ruling sought to be appealed against was delivered on 7<sup>th</sup> August 2018 meaning that the applicant's intended appeal ought to have been filed on or about 7<sup>th</sup> September 2018. The impugned ruling which is annexed to the supporting affidavit was certified by the trial court on 11<sup>th</sup> October 2018. The instant application was filed on 31<sup>st</sup> October 2018 less than three weeks thereafter. I am thus satisfied that the delay is not inordinate and it is satisfactorily explained.

6. In the premises, I find that the application is merited and it is hereby allowed. The applicant is granted leave to file his intended appeal within the next fourteen days. As the application is not opposed, I will not make any order on costs.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 24<sup>th</sup> day of May, 2019.**

**C. W. GITHUA**

**JUDGE**

**In the presence of:**

No appearance for the applicant

No appearance for the respondent

Mr. Salach: Court Assistant