

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

MISC CIVIL APPL. NO. 20 OF 2018

IN THE MATTER OF EXTENSION OF

TIME TO FILE APPEAL OUT OF TIME

BETWEEN

DAVID NYABUTO AMBOGA

PASKALIA MORAA AMBOGA.....APPLICANTS

AND

GUSII MWALIMU SAVINGS AND CREDIT

CO-OPERATIVE SOCIETY LTD.....RESPONDENT

RULING

1. The applicant seeks this Court's discretion to condone the filing of the appeal against a Judgment that was delivered on 27th November 2015. The application before me was filed on 9th March 2018. The reason advanced for the delay is that the applicant was waiting for typed proceedings and judgment to order to lodge the appeal.

2. Under Section 79G of the Civil Procedure Act, the applicant must show sufficient cause for failing to lodge an appeal. An appeal is filed by way of memorandum of appeal within 30 days from the date of Judgment. As the Respondent points out, it is now over 2 ½ years since the Judgment was delivered. The explanation given lacks merit as the application for payment of proceedings was made in 2016 and even then nothing was done.

3. The delay is inordinate and the matter must now be left to rest. The Respondent would be prejudiced by its revival. The application is dismissed with costs assessed at Kshs. 5000/=.

D.S Majanja

Judge

25/6/2018

[Ruling read and delivered in open Court]

D.S Majanja

Judge

25/6/2018