



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO. 86 OF 2018**

**S M.....APPLICANT**

**VERSUS**

**H G E.....RESPONDENT**

**RULING**

1. For determination is the originating Notice of Motion dated 7<sup>th</sup> May 2018. In it the applicant seeks extension of time to file and serve notice and record of appeal, and that the notice and record of appeal lodged out of time be deemed to have been duly filed. The applicant was the claimant in Hamisi Kadhi's Court Cause No. 4 of 2018. A decision was made in that matter on 26<sup>th</sup> February 2018 revoking her marriage. She is aggrieved by that decree and desires to appeal against it.

2. The application is opposed. It is argued that the appeal is bad in law, for the applicant has not demonstrated the conditions set for the orders sought.

3. I have perused the record. I see that there is copy of a notice of appeal filed at the lower court, dated 7<sup>th</sup> May 2018, and a certificate of delay from the said court, dated 3<sup>rd</sup> May 2018.

4. I need not assess probability of success of the intended appeal. I am only required to evaluate whether it was filed timeously and whether the appellant would suffer substantial loss. The judgment of the Kadhi was delivered on 26<sup>th</sup> February 2018, and the certificate of delay indicates that proceedings and certified copy of the order were sought on 23<sup>rd</sup> March 2018 and were supplied on 3<sup>rd</sup> May 2018, and the Motion herein was lodged herein on 25<sup>th</sup> May 2018; it cannot be said that there was unreasonable delay in moving the High Court on application for leave.

5. In the circumstances, I am persuaded that the orders sought are available. I shall accordingly allow the application dated 7<sup>th</sup> May 2018. Leave to file appeal is hereby granted. Leave is for twenty-eight (28) days. Notice and record of appeal lodged out of time are hereby deemed as duly filed.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 8<sup>TH</sup> DAY OF AUGUST, 2018**

**W. MUSYOKA**

**JUDGE**