

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 44 OF 2015

BENSON KAMU MUTURA.....APPELLANT

VERSUS

JAMES MURIMI KAHINGA.....RESPONDENT

RULING

1. The appeal herein is against a decree passed on 10/10/2014. The memorandum of appeal was filed on 26/05/2015, out of the time for filing appeals prescribed by section 79G of the **Civil Procedure Act, Cap 21**. The Appellant has filed and served a record of appeal which contains a certificate of delay by the lower court to the effect that the Appellant applied for copies of proceedings and judgement on 13/10/2014 (that is 3 days after delivery of the judgement) and that the same were supplied to him on 01/04/2015 upon payment of the balance of the necessary court fees. The certificate does not state when (if at all) the Appellant was informed the proceedings and judgment were ready for collection. It is therefore just to assume that they were ready for collection on 01/04/2015.

2. By dint of section 79G aforesaid the Appellant's appeal should have been filed within 30 days from 10/10/2014 - that is on or before 10/11/2014. However, again by dint of the same section, the period certified by the lower court for preparation and delivery to the Appellant of the proceedings and judgement, must be excluded – that is the period from 13/10/2014 to 01/04/2015, some 173 days. So, the Appellant had until 01/05/2015 to file his appeal. He filed it on 26th May 2015, some 25 days out of time.

3. Though this delay of 25 days is not specifically explained in the Appellant's affidavit sworn in support of his **notice of motion dated 31/07/2015** seeking validation of his appeal which was filed out of time, I am satisfied that in the circumstances of this case that delay is not inordinate. Those circumstances include the fact that the Appellant has been acting in person and has already filed his record of appeal, which means that the appeal can be disposed of as soon as the original lower court record is received.

4. I am thus satisfied that the Appellant had good and sufficient cause for not filing his appeal in time. I will allow his application and enlarge time for filing his appeal, such that the appeal is now deemed to have been filed in time. It is so ordered.

5. By the same token I must refuse the Respondent's application by **notice of motion dated 27/07/2015** to strike out the appeal for incompetency on account of the same having been filed out of time. It is hereby dismissed.

6. Costs of both applications are awarded to the Respondent in the appeal. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 25TH DAY OF FEBRUARY 2016

H.P.G. WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 26TH DAY OF FEBRUARY 2016