



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**HIGH COURT CIVIL MISC. APPLI. NO. 721 OF 2012**

**JOHN KAMAU NDERE.....APPLICANT**

**V E R S U S**

**NDETIKA RURAL SACCO SOCIETY LTD.....1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The subject matter of this ruling is the motion dated 17.12.2012 in which John Kamau Ndere, the Applicant herein, is seeking for an extension of time to file and serve A record of appeal. The motion is supported by the affidavit of the Applicant. The motion was served but the same did not receive any response. When the motion came up for interpartes hearing the Respondents did not appear despite having been served, hence the Applicant was permitted to prosecute the application *ex parte*.

2. It is the submission of the Applicant that he received typed proceedings late after the time to file appeal had lapsed. He also attached a copy of the certificate of delay to the supporting affidavit. The Applicant further stated that the Applicant's file could not be traced in his advocates because it had not been surrendered to the Applicant's advocates office by an advocate who had left the employment of that office. The same was later traced when the time to file the record of appeal had lapsed.

3. I have carefully considered the grounds set out on the face of the motion and the facts deposed in the supporting affidavit plus the oral submissions of the Applicant's learned counsel. It is apparent from the record that on June 2<sup>nd</sup> July 2012 the notice of appeal was filed. It is also stated that copies of proceedings and judgement were not ready in time and the Applicant was therefore prompted to apply to be given a certificate of delay. The Applicant avers that the delay in filing of appeal was due to inadvertent mistake occasioned by the missing of the Applicant's office file which has since been retrieved from an advocate who left the firm of Otieno Arum & Co. Advocates.

4. The Applicants' averments were never controverted by the Respondents, therefore I have no reason to doubt the veracity of those averments. I find the reasons advanced by the Applicant in support of the motion to be plausible.

5. In the end, the motion is allowed as prayed. Consequently the Applicant is granted 10 days from the date hereof to file an appeal out of time. Costs of the motion shall abide the outcome of the intended appeal.

Dated, Signed and Delivered in open court this 22<sup>nd</sup> day of April, 2016

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent