



**REPUBLIC OF KENYA**

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

**CIVIL MISC. APPLICATION NO. 29 OF 2012**

JOHN NZIOKA KAVELA.....PLAINTIFF/APPLICANT

**VERSUS**

GEORGE KIMONDIU.....1<sup>ST</sup> DEFENDANT/RESPONDENT

ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT/RESPONDENT

**RULING**

1. This is an application for leave to file an appeal out of time. The delay in filing the appeal is blamed on delay in obtaining copies of the proceedings of the lower court file due to misplacement of the same.

2. The Respondents did not file any papers in opposition to the application.

3. During the hearing of the application, the Respondents did not attend court although they were served. The Applicant filed written submissions which I have duly considered.

4. The principles of the law to be considered on whether or not to allow an application to extend the time within which to appeal are settled. *See for example Barclays Bank of Kenya Ltd vs Martha Karwirwa Antony (2010) eKLR* where the Court of Appeal cited with approval the case of **Leo Sila Mutiso vs Rose Hellen Wangari Mwangi Civil Application No. 225 of 1997** where it was stated as follows:

***“It is now well settled that the decision whether or not to extend the time of appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are first the length of the delay, secondly the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the respondent if the application is granted”.***

5. The lower court ruling complained about was delivered on 4<sup>th</sup> November, 2011. The application herein was filed on 14<sup>th</sup> February 2012. Taking into account that time does not run during the period 21<sup>st</sup> December to the 13<sup>th</sup> of January, the delay was not inordinate and has been explained. I have looked at the grounds of appeal. The same raises serious issues which need to be ventilated. There is no prejudice that can be suffered by the Respondent which cannot be compensated by way of damages.

6. With the foregoing, I allow the application with costs to the Respondent.

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**B. THURANIRA JADEN**

**Dated and delivered** at Machakos this 28<sup>th</sup> day of May, 2015

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**B. THURANIRA JADEN**

**JUDGE**