



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT HOMA BAY**

**MISC. APPLICATION NO. 9 OF 2015**

**BETWEEN**

**COLLSON MIKWA OWUOR ..... APPLICANT**

**AND**

**JOHN ONYANGO OGUTU ..... RESPONDENT**

**RULING**

1. The application before the court is dated 19<sup>th</sup> November 2015 and it is for extension of time to lodge an appeal out of time from the judgment delivered on 15<sup>th</sup> September 2011 in *Rongo SRM's Court Civil Case No. 146 of 2008 (John Onyango Ogutu v Collson Mikwa Owuor)*.
2. From the depositions filed by the applicant there is nothing to show why the appeal was not filed within 30 days from the date the judgment was delivered on 15<sup>th</sup> September 2011. There is no evidence that the court file was missing or that the applicant took any steps to inform the court that it was missing. In reality over 5 years of slumber by the applicant are unaccounted for and for all intents and purposes the delay is inordinate and prejudicial to the respondent.
3. This court can only exercise its discretion on the basis of material before it. I therefore find and hold that the applicant has failed to show, "*good and sufficient cause*" within the meaning of the proviso to **section 79G** of the *Civil Procedure Act (Chapter 21 of the Laws of Kenya)*
4. The application is dismissed with costs to the respondent assessed at Kshs. 5,000/-.

**DATED and DELIVERED at HOMA BAY this 22<sup>nd</sup> day of December 2015.**

**D.S. MAJANJA**

**JUDGE**

Mr Kirui instructed by Odero Nyakwana & Company Advocates for the applicant.

Mr Otieno instructed by O. M. Otieno & Company Advocates for the respondent.