

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NUMBER 1 OF 2013

NGUNDO PETER WARUI. APPLICANT/PLAINTIFF

VERSUS

JOSEPH KARIUKI KAMAU. RESPONDENT/DEFENDANT

R U L I N G

The application before the court is a Notice of Motion filed by the Plaintiff and dated 4th January, 2013. It mainly sought the orders that the Applicant be given leave to file an appeal out of time.

The applicant bases that application on the ground that the delay in filing the appeal within time and this application without an undue delay was caused by the court which had failed to inform the Applicant when it would deliver a ruling trying to set aside an ex parte Ruling.

The applicant averred that the original ruling had been fixed for delivery on 7th June, 2012 when it was postponed with indication that it would be given in future on notice. That the notice was never served on him until the 27th September, 2012 when he learnt that the lower court Ruling had in fact been delivered on 18th June, 2012. That request the court file was not traced until 1st November, 2011. That that is when the applicant prepared and filed this application for leave, because he was already out of time.

I have perused the application and documents in support of the same. I note that the ruling intended to be challenged in the intended appeal, has not been annexed to this application. The court cannot accordingly properly comprehend the contents of this application nor can it be in a position to ascertain the accuracy of the facts in the supporting affidavit as compared with those in the said ruling.

Furthermore, the court cannot in these circumstances assess whether, the intended appeal has good prima facie, chances of success to warrant subjecting the Respondent who has a judgment in his hands into further proceedings during the appeal while such also requires protection of this court as decree holder.

In the above circumstances, this court rules, without more, that this application is fatally incompetent for failure to annex the lower court ruling and must and is hereby struck out with costs. Orders accordingly.

Dated and delivered at Nairobi this 25th day of February, 2014.

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D A ONYANCHA

JUDGE