

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC. CIVIL APPLICATION NO. 54 OF 2013

MIRRIAM NASSERIAN SAKANA APPELLANT/APPLICANT

VERSUS

1.KITHOME KITEVU

JUSTUS MUIA RESPONDENTS

RULING

1. The application dated 30/1/2013 seeks orders that the court be pleased to extend the time within which the Plaintiff should file his appeal and that the Appeal filed herein be deemed as duly filed.
2. The affidavit in support sworn by the Applicant's counsel blames the delay on the on availability of the lower court file and also on pressure of work on the counsel's side. It is argued that the appeal has overwhelming chances of success.
3. In opposition to the application, the Respondent's counsel filed a replying affidavit. It is averred that the application has no merits. That the intended appeal has no chances of success. That the Interested Party was enjoined in the suit as a Defendant by the consent of the parties and that the issues herein would best be addressed by having the suit before the lower court fully heard on priority basis.
4. Whereas no certificate of delay has been exhibited herein and the counsel has conceded to some delay on his part, nevertheless the delay is not inordinate. Under **Order 50 rule 6** the court has wide and unfettered power to enlarge time. This discretion is however to be exercised judicially (See for example **Poith Walla –vs- Kidogo Basi Housing Co-operative Society & 31 Others 2003 KLR 74**). The delay has been explained. The delay is also not inordinate. From the Memorandum of Appeal, it is apparent that the appeal is arguable. The application meets the requirements set out under **Order 50 rule 6**. Consequently, I allow the application with costs to the Respondent. The Applicant to file his appeal within 30 days from date hereof.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 30th day of September 2014.

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B. THURANIRA JADEN

JUDGE