

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. CIVIL APPLICATION NO. 11 OF 2012

IRENE WAIRIMU MUTHEE.....APPLICANT

VERSUS

GITONGA MUGAMBI MUKETHA.....1ST RESPONDENT

WILSON IRUNGU MWANGI.....2ND RESPONDENT

RULING

Pursuant to the provisions of **Section 79G** of the **Civil Procedure Act** and **Order 50 Rule 4** of the **Civil Procedure Rules**, **Irene Wairimu Muthee**, the applicant herein, took out the Motion dated 26th January, 2012 in which she sought for *inter alia* an order extending time to file an appeal against the Judgment and or decree of the **Principal Magistrate delivered on 25th August, 2011 vide Karatina P.M.C.C.C no. 22 of 2008**. The applicant swore an affidavit he filed in support of the Motion. **Gitonga Mugamba Muketha** and **Wilson Irungu Mwangi**, the 1st and 2nd Respondents opposed the Motion by filing the replying affidavit of Mary Kinyanjui, the legal manager claims Direct Line Assurance Co.Ltd.

The main ground argued in support of the Motion is that it took time for the Applicant to be supplied with typed proceedings until the time fixed to file appeal lapsed. The applicant further stated that he has an appeal with high chances of success. The Respondents are of the view that the Applicant did not need the typed proceedings to file an appeal because it was sufficient for the Applicant's advocate to simply peruse the court file to ascertain the issues.

I have considered the rival averments and submissions. In considering whether or not to extend time to appeal, this court has a wide discretion. The applicant is only required to show he has a good and sufficient cause for not filing the appeal in time. The Applicant has clearly stated that he has a good appeal with high chances of success. He has stated also that he needed to be supplied with typed proceedings to enable him prepare and file an appeal. The Respondents have not controverted those assertions. There is evidence that the applicant applied to be supplied with typed proceedings. A deposit was made to pay for the copying charges. A certificate for delay was given. In my view, it is important for a party for ease of reference to have typed proceedings. It is possible one may not read the handwritten notes of certain judicial officers. I am convinced the applicant has given a satisfactory reason to enable me exercise my discretion in her favour. I have further looked at the draft memorandum of appeal and I am convinced there are arguable grounds of appeal.

In the end, I allow the application. Consequently, I grant the applicant 30 days leave to file an appeal out of time. Costs of the motion to abide the outcome of the intended appeal.

Dated, Signed and delivered this 16th day of December 2013.

J.K.SERGON

JUDGE

- In open Court in the presence of Kimunya holding brief for Ngatunyi for Respondent and
- Githini holding brief for Mbuthia for Applicant.