



**JORAM APUNDA. .... PLAINTIFF**

**VERSUS**

**NDETIKA RURAL SACCO LIMITED. .... DEFENDANT**

**R U L I N G**

This application dated 10/8/2011 seeks leave to appeal out of time. The Applicant who was the defendant in the lower court depones in his affidavit of support, that he was not served with notice of the date for delivery of the lower court judgment. He further depones that he became aware that judgment had been delivered after the prescribed period for filing appeals had expired. That he immediately filed this application for extension of time.

Although the application was properly served, the Respondent/decreed-holder did not file a Replying Affidavit or Grounds of Opposition. Even, during the hearing of this application on 29/11/2011, Mr.Omao who represented the Respondents, did not give any reason for opposing the application. He did not either, controvert any of the facts upon which the application was grounded except to say that the Respondent opposed the application. The court accordingly takes the position that the application is not reasonably opposed.

I have also perused the would-be-grounds of Appeal. I am satisfied that they raise arguable issues in the circumstances.

For the above reasons, the application to expand time for appealing should be allowed in the interest of justice.

**ORDERS**

- 1) Application to extend time for appeal to be filed is hereby allowed.
- 2) Applicant shall file his appeal within 30 days, in default of which the order shall stand discharged.
- 3) Costs are in the cause.

Dated and delivered at Nairobi this 29<sup>th</sup> day of February, 2012.

.....  
**D A ONYANCHA**  
**JUDGE**