



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Miscellaneous Civil Application 57 of 2010**

**SAMSON KARAFWA ..... APPLICANT**

**VERSUS**

**ELIJAH AYIEKO KEVOLWE ..... RESPONDENT**

***( An application for leave to file an appeal out of time and stay of proceedings against the judgment and/or decree of the court in the Vihiga Senior Resident Magistrate’s court Civil Suit No. 70 of 2006)***

**RULING**

The application by way of Notice of Motion dated 15.11.10 seeks orders that:-

- “1. The firm of A.B.L. Musiega & Company advocates be let to take over the proceedings in the Vihiga Senior Resident Magistrate’s court Civil Suit No. 70 of 2006 on behalf of the applicant and the intended appeal.
2. The applicant be granted leave to file an appeal out of time against the judgment and or decree of the court in the Vihiga Senior Resident Magistrate’s Civil Suit No. 70 of 2006 Elijah Ayieko Kevolwe –vs- Samson Karafwa.
3. There be stay of proceedings in the lower court pending inter partes hearing of this application and also pending filing, hearing and determination of the intended appeal.
4. Costs of this application be provided for.”

The application is supported by the affidavit of the applicant **SAMSON KARAFWA**, sworn on 15.11.10. The thrust of the said affidavit is that the applicant was not aware of the delivery of the judgment.

In opposition to the application, the respondent, **ELIJAH AYIEKO KEVOLWE** filed a replying affidavit sworn on 15.6.11. It is contested that in the said affidavit that the applicant was duly represented by counsel when judgment was delivered.

Mr. Musiega Advocate appeared for the applicant while Mr. Athung’a Advocate appeared for the respondent. Both counsels filed written submissions which I have duly considered.

The annexed copy of judgment (annexture EAK1) clearly shows that one Mr. Osango was holding brief for Mr. Nyangah for the defendant (applicant) when the judgment was delivered.

The applicant can only blame his advocate for failing to inform him of the judgment. There is therefore no satisfactory explanation for the delay in filing the appeal in time.

The judgment was delivered on 16.6.10. The application herein was filed on 16.11.10. This is a delay of about five months. The delay is inordinate although it seems that the respondent has not yet moved to execute the same.

All in all, this court is however inclined to let the applicant exercise his right of appeal.

Consequently, the application is allowed on condition that the applicant deposit Kshs.100,000/= security for the performance of the decree. Costs to the respondent.

*Delivered, dated and signed at Kakamega this 29<sup>th</sup> day of November, 2012*

**B. THURANIRA JADEN**  
**J U D G E**